

TEXT OF PROPOSED REGULATIONS

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DIVISION 4.5, TITLE 22, CALIFORNIA CODE OF REGULATIONS

TABLE OF CONTENTS

9	CHAPTER 10. HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL	2
10	§ 66260.10. Definitions.....	2
11	CHAPTER 14. Standards for Owners and Operators of Hazardous Waste Transfer,	
12	Treatment, Storage, and Disposal Facilities	3
13	§ 66264.16. Personnel Training.....	3
14	§ 66264.101. Corrective Action for Waste Management Units.....	5
15	§ 66264.143. Financial Assurance for Closure.....	6
16	§ 66264.144. Cost Estimate for Postclosure Care.....	10
17	§ 66264.145. Financial Assurance for Postclosure Care.....	11
18	§ 66264.146. Use of a Mechanism for Financial Assurance of Both Closure and Post-Closure Care.....	16
19	§ 66264.147. Liability Requirements.....	16
20	§ 66264.151. Wording of the Instruments.....	21
21	CHAPTER 15. Interim Status Standards for Owners and Operators of Hazardous Waste	
22	Transfer, Treatment, Storage, and Disposal Facilities	35
23	§ 66265.16. Personnel Training.....	35
24	§ 66265.143. Financial Assurance for Closure.....	37
25	§ 66265.144. Cost Estimate for Postclosure Care.....	40
26	§ 66265.145. Financial Assurance for Postclosure Care.....	41
27	§ 66265.146. Use of a Mechanism for Financial Assurance of Both Closure and Post-Closure Care.....	43
28	§ 66265.147. Liability Requirements.....	44
29	CHAPTER 20. The Hazardous Waste Permit Program	47
30	§ 66270.14(b) Contents of the Part B: General Requirements	47
31	(22) Corrective Action Cost Estimate	47
32	(23) Relevant Standard Operating Procedures	47
33	(24) Community Involvement Profile.....	47
34	§ 66270.14(e) Hazardous Waste Facility Permit Health Risk Assessment.....	49
35	Appendix I. Classification of Permit Modifications.....	57
36	CHAPTER 21. Procedures for Hazardous Waste Permit Decisions	58
37	§ 66271.50 Definitions and Applicability.....	58
38	§ 66271.51 Determining the Initial Score for Each Class I Violation	59
39	§ 66271.52 Adjustment to the Initial Score for Repeat Class I Violations	61
40	§ 66271.53 Inspection Violation Score	61
41	§ 66271.54 Facility Violations Scoring Procedure (VSP) Score and Compliance Tiers.....	63
42	§ 66271.55 Permit Decisions.....	63
43	§ 66271.56 Requirements for Facility VSP Score of “Conditionally Acceptable”	64
44	§ 66271.57 Requirements for Facility VSP Score of “Unacceptable”	67
45	§ 66271.58 Appeals for Reconsideration	69
46		

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****~~Strikeout~~ text reflects deleted text**

CHAPTER 10. HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

Amend Title 22, division 4.5, chapter 10, article 2, section 66260.10 to read:

§ 66260.10. Definitions.

Additional definitions applicable to management of universal wastes are found in section 66273.9. When used in this division, the following terms have the meanings given below:

...

“Chemical of Potential Concern” or “COPC” means a chemical at or from the facility that is present in soil, water or air, at a concentration that may pose a risk, and is potentially due to facility related activities or contamination. This definition is solely for purposes of the health risk assessment process pursuant to section 66270.14(e).

...

Note: Authority cited: Sections 25141, 25150, 25158.1, 25158.4, 25159, 25159.5, 25187.7, 25200.10, 25204, 25214.9, 25214.10.2, 25218.3(d), 25200.21, 25245, 25316, 25355.5, 25356.9, 25358.3, 25358.9, 58004, and 58012, Health and Safety Code; Governor's Reorganizational Plan #1 of 1991; and Sections 42475.1 and 42475.2, Public Resources Code. Reference: Sections 25110.02, 25110.1, 25110.5, 25111, 25112, 25112.5, 25113, 25114, 25115, 25117, 25117.1, 25117.3, 25117.8, 25117.9, 25117.11, 25118, 25119, 25120, 25121, 25121.5, 25122.7, 25123, 25123.3, 25123.5, 25123.6, 25141, 25150, 25158.2, 25159, 25159.5, 25187.7, 25200.10, 25201.6, 25204, 25214.9, 25218.1(f), 25218.3, 25200.21, 25229, 25245, 25316, 25354(b), 25355.5, 25355.6, 25356.9, 25358.1, 25358.9, 25359.8, 25361, 25501, 25529, 58004, and 58012, Health and Safety Code; Section 42463(f)(1), Public Resources Code; and 40 Code of Federal Regulations Sections 260.10, 261.1, 262.21, 264.551, 264.1031, 268.2, 270.2 and 273.6.

1 **CHAPTER 14. Standards for Owners and Operators of Hazardous Waste Transfer,**
2 **Treatment, Storage, and Disposal Facilities**

3
4 **Amend** sections 66264.16, 66264.101, 66264.141, 66264.143, 66264.144, 66264.145,
5 66264.146, 66264.147, and 66264.151 of Title 22 of the California Code of Regulations, to
6 read:

7
8 **§ 66264.16. Personnel Training.**

9 (a)(4) Facility personnel shall successfully complete a training program through ~~of~~-classroom
10 or online instruction, or on-the-job training that teaches personnel ~~them~~ to perform their
11 duties in a way that ensures the facility's compliance with the requirements of this ~~chapter~~
12 division and subsection 5192(p) of Title 8, California Code of Regulations. Facility personnel
13 engaged in shipping hazardous waste shall be triennially trained to meet the requirements in
14 section 172.704 of Title 49, Code of Federal Regulations commensurate with their
15 responsibilities.

16 (1) The owner or operator shall ensure that ~~this~~ the training program includes all the
17 elements specified in this section ~~described in the document required under subsection~~
18 ~~(d)(3) of this section.~~

19 (2) ~~This program~~ Hazardous waste management training must shall be directed by a
20 person trained in hazardous waste management procedures, and must ~~shall~~ include
21 instruction which teaches facility personnel hazardous waste management procedures
22 (including contingency plan implementation and the identification and segregation of
23 incompatible hazardous wastes or products) relevant to the positions in which they are
24 employed.

25 (3) At a minimum, the emergency response ~~training program shall~~ must be designed to
26 ensure that facility personnel are able to respond effectively to emergencies by
27 familiarizing them with emergency prevention, mitigation, abatement, and notification
28 procedures, emergency equipment, and emergency systems, including all the following;
29 ~~where applicable:~~

30 (A) procedures for using, inspecting, repairing, and replacing facility emergency
31 and monitoring equipment;

32 (B) key parameters for automatic waste feed cut-off systems;

33 (C) communications or alarm systems;

34 (D) response to fires or explosions;

35 (E) response to groundwater contamination incidents; ~~and~~

36 (F) shutdown of operations;

37 (G) self-protection measures; and

38 (H) accident prevention methods.

39 (4) The training program must also be designed to ensure the following:

40 (A) General awareness. All facility personnel shall be provided training that
41 provides an overview of the facility description and operations that are subject to
42 this chapter, including, but not limited to, security and safety considerations; and

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 (B) Function-specific job training. All facility personnel who are involved with
2 hazardous waste management activities shall be provided training concerning
3 the requirements of this chapter and any relevant standard operating procedures
4 applicable to job tasks and functions performed by the employee.

5 (b) Facility personnel shall successfully complete the program required in subsection (a) of
6 this section within 180 days ~~six months~~ after the date of their employment or assignment to
7 a facility, or to a new position at a facility. Employees hired after the effective date of these
8 regulations shall not work in unsupervised positions until they have completed the training
9 requirements of subsection (a) of this section.

10 (c) Facility personnel shall take part in an annual review of the initial training required in
11 subsection (a) of this section.

12 (d) The training records required by this subsection must demonstrate compliance with
13 subsection (a) and include the specific elements set out in paragraphs (1) through (4). The
14 owner or operator shall maintain the following documents and records at the facility:

- 15 (1) the job title for each position at the facility related to hazardous waste management,
16 and the name of the employee filling each job;
17 (2) a written job description for each position listed under paragraph ~~subsection-(d)(1)~~ of
18 this section. This description may be consistent in its degree of specificity with
19 descriptions for other similar positions in the same company location or bargaining unit,
20 but shall include the requisite skill, education, or other qualifications, and duties of
21 employees assigned to each position;
22 (3) a written description, including a syllabus and/or outline, of the type and amount of
23 both introductory and continuing training that will be given to each person filling a
24 position listed under paragraph (d)(1) of this section;
25 (4) employee signed or certified records that document that the training ~~or job~~
26 ~~experience~~ required under subsections (a), (b), and (c) of this section has been given
27 to, and completed by, each employee.

28 (e) Training records on current personnel shall be kept until closure of the facility; training
29 records on former employees shall be kept for at least three years from the date the
30 employee last worked at the facility. Personnel training records may accompany personnel
31 transferred within the same company.

32 (f) The owner or operator shall prepare and submit to the Department by March 1 of each
33 year, an annual certification that attests to the training of the facility personnel in accordance
34 with subsection (a). The certification must include the following:

- 35 (1) a signed statement certifying that facility personnel have been trained in a manner
36 that satisfies the requirements of section 66264.16 and any applicable requirements of
37 subsection 5192(p) of Title 8, California Code of Regulations and section 172.704 of
38 Title 49, Code of Federal Regulations.
39 (2) the job title for each position at the facility related to hazardous waste management,
40 and the name of the employee filling each job.

41

1 *Note: Authority cited: Sections ~~208~~, 25150, ~~and~~ 25159, 25200.21, 58004, and 58012 Health*
2 *and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR*
3 *Section 264.16.*

4
5 ...

6
7 **§ 66264.101. Corrective Action for Waste Management Units.**

8 (a) The owner or operator of a facility seeking a permit for the transfer, treatment, storage,
9 or disposal of hazardous waste shall institute corrective action as necessary to protect
10 human health and the environment for all releases of hazardous waste or constituents from
11 any solid or hazardous waste management unit at the facility, regardless of the time at
12 which waste was placed in such unit.

13 (b) The Department shall require financial assurance for corrective action at the earliest time
14 the Department is able to make a reasonable determination of the amount of financial
15 assurance required. The Department shall make a reasonable determination of the amount
16 of financial assurance required for corrective action before corrective action is initiated by a
17 facility.

18 ~~(b)~~(c) Corrective action must ~~will~~ be specified in the permit or order in accordance with this
19 article, article 15.5, or article 17, and Health and Safety Code sections 25200.10, 25187, or
20 25200.14, or section 25358.9 where as provided for under the provisions of that section the
21 Department has excluded the removal or remedial action at a site from the hazardous waste
22 facilities permit required by Health and Safety Code section 25201. The permit or order must
23 ~~will~~ contain schedules of compliance for such corrective action (where such corrective action
24 cannot be completed prior to issuance of the permit) and assurances of financial
25 responsibility for completing such corrective action. The permit or order must require the
26 owner or operator to provide financial assurance and provide an advance payment in the
27 amount of at least 25 percent of the amount specified in subsection (b).

28 ~~(c)~~(d) The owner or operator shall implement corrective actions beyond the facility boundary,
29 where necessary to protect human health or the environment, unless the owner or operator
30 demonstrates to the satisfaction of the Department, that despite the owner's or operator's
31 best efforts, the owner or operator was unable to obtain the necessary permission to
32 undertake such actions. The owner or operator is not relieved of all responsibility to
33 clean_up a release that has migrated beyond the facility boundary where off-site access is
34 denied. On-site measures to address such release will be determined on a case-by-case
35 basis. Assurance of financial responsibility for such corrective action shall be provided.

36
37 *Note: Authority cited: Sections 25150, 25159, 25187, 25200.10, 25200.21, 25245, 25355.5,*
38 *25356.9, 25358.3, 25358.9, 58004 and 58012, Health and Safety Code. Reference: Sections*
39 *25150, 25159.5, 25187, 25200, 25200.10, 25355.5, 25356.9, 25358.3 and 25358.9, Health*
40 *and Safety Code; 40 CFR Section 264.101.*

41
42 ...

1
2 **§ 66264.143. Financial Assurance for Closure.**

3 (a) Closure trust fund.

4 ...

5 (b) Surety bond guaranteeing payment into a closure trust fund.

6 ...

7 (c) Surety bond guaranteeing performance of closure.

8 ...

9 (d) Closure letter of credit.

10 ...

11 (e) Closure insurance.

12 (1) An owner or operator may satisfy the requirements of this section by obtaining
13 closure insurance which conforms to the requirements of this section and submitting a
14 certificate of such insurance to the Department. An owner or operator of a new facility
15 shall submit the certificate of insurance to the Department at least 60 days before the
16 date on which hazardous waste is first received for transfer, treatment, storage or
17 disposal. The insurance shall be effective before this initial receipt of hazardous waste.

18 At a minimum, the insurer shall be:

- 19 (A) licensed to transact the business of insurance in California; or
20 (B) eligible to provide insurance as an excess or surplus lines insurer, in one or
21 more States California. Any excess or surplus insurance relied upon by the
22 owner or operator to meet the requirements of this subsection shall be transacted
23 by and through an excess or surplus lines broker currently licensed by the
24 California Department of Insurance.

25 (2) The wording of the certificate of insurance shall be identical to the wording specified
26 in section 66264.151, subsection (e). The certificate of insurance shall contain original
27 signatures.

28 ...

29 (f) Financial test and guarantee for closure.

30 (1) An owner or operator may satisfy the requirements of this section by demonstrating
31 that he or she passes a financial test as specified in this subsection. To pass this test
32 the owner or operator shall meet the criteria of either subsection (f)(1)(A) or (B) of this
33 section and comply with subsection (f)(11) of this section.

- 34 (A) The owner or operator shall have all the following:
35 1. two of the following three ratios: a ratio of total liabilities to net worth
36 less than 2.0; a ratio of the sum of net income plus depreciation, depletion
37 and amortization to total liabilities greater than 0.1; and a ratio of current
38 assets to current liabilities greater than 1.5; ~~and~~
39 2. a current corporate credit rating of AAA, AA, A, or BBB as issued by
40 Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 ~~2-3.~~ net working capital and tangible net worth each at least six times the
2 sum of the current closure and postclosure cost estimates and the current
3 plugging and abandonment cost estimates; ~~and~~
4 ~~3.~~ 4. tangible net worth of at least \$~~10~~ 20 million; and
5 ~~4-5.~~ assets located in the United States amounting to at least 90 percent
6 of total assets or at least six times the sum of the current closure and
7 postclosure cost estimates for all of the owner's or operator's hazardous
8 waste facilities regulated by the Department and the current plugging and
9 abandonment cost estimates.

10 (B) The owner or operator shall have all the following:

- 11 1. a current rating for his or her most recent bond issuance of AAA, AA, A
12 or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued
13 by Moody's; ~~and~~
- 14 2. tangible net worth at least six times the sum of the current closure and
15 postclosure cost estimates and the current plugging and abandonment
16 cost estimates; ~~and~~
- 17 3. tangible net worth of at least \$~~10~~ 20 million; and
- 18 4. assets located in the United States amounting to at least 90 percent of
19 total assets or at least six times the sum of the current closure and
20 postclosure cost estimates for all of the owner's or operator's hazardous
21 waste facilities regulated by the Department and the current plugging and
22 abandonment cost estimates.

23 (2) The phrase "current closure and postclosure cost estimates" as used in subsection
24 (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1
25 ~~through 4~~ through 6 of the letter from the owner's or operator's chief financial officer as
26 specified in section 66264.151(f). The phrase "current plugging and abandonment cost
27 estimates" as used in subsection (f)(1) of this section refers to the cost estimates
28 required to be shown in paragraphs 1 ~~through 4~~ through 6 of the letter from the owner's
29 or operator's chief financial officer.

30 (3) To demonstrate that this test has been met, the owner or operator shall submit the
31 following items to the Department:

- 32 (A) a letter signed by the owner's or operator's chief financial officer. The letter
33 shall be on the owner's s or operator's official letterhead stationery, shall contain
34 an original signature and shall be completed as specified in section 66264.151,
35 subsection (f); and
- 36 (B) a copy of the owner's or operator's financial statements and the independent
37 certified public accountant's report on examination of the owner's or operator's
38 financial statements for the latest completed fiscal year; and
- 39 (C) a special report from the owner's or operator's independent certified public
40 accountant to the owner or operator ~~stating that~~ includes the following:
 - 41 1. a statement that the independent certified public accountant has
42 compared the data which the letter from the chief financial officer specifies

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 as having been derived from the independently audited, year-end financial
2 statements for the latest fiscal year with the amounts in such financial
3 statements; and

4 ~~2. in connection with that procedure, no matters came to the independent~~
5 ~~certified public accountant's attention which caused that accountant to~~
6 ~~believe that the specified data should be adjusted~~ identification and
7 description of the specific accounting standards and guidance relied upon
8 to prepare the report.

9 (4) An owner or operator of a new facility shall submit the items specified in subsection
10 (f)(3) of this section to the Department at least 60 days before the date on which
11 hazardous waste is first received for transfer, treatment, storage or disposal.

12 (5) After the initial submission of items specified in subsection (f)(3) of this section, the
13 owner or operator shall send updated information to the Department within 90 days after
14 the close of each succeeding fiscal year. This information shall consist of all three items
15 specified in subsection (f)(3) of this section.

16 (6) If the owner or operator no longer meets the requirements of subsection (f)(1) of this
17 section, the owner or operator shall send notice to the Department of intent to establish
18 alternate financial assurance as specified in this section. The notice shall be sent by
19 certified mail within 90 days after any occurrence that prevents the owner or operator
20 from meeting the requirements. The owner or operator shall provide the alternate
21 financial assurance within 120 days after the end of the company's latest completed
22 fiscal year.

23 (7) The Department may, based on a reasonable belief that the owner or operator may
24 no longer meet the requirements of subsection (f)(1) of this section, require reports of
25 financial condition at any time from the owner or operator in addition to those specified
26 in subsection (f)(3) of this section. If the Department finds, on the basis of such reports
27 or other information, that the owner or operator no longer meets the requirements of
28 subsection (f)(1) of this section, the owner or operator shall provide alternate financial
29 assurance as specified in this section within 30 days after notification of such a finding.

30 (8) The Department may disallow use of this test on the basis of qualifications in the
31 opinion expressed by the independent certified public accountant in his or her report on
32 examination of the owner's or operator's financial statements (see subsection (f)(3)(B)
33 of this section). An adverse opinion or a disclaimer of opinion shall be cause for
34 disallowance. The Department shall evaluate other qualifications on an individual basis.
35 The owner or operator shall provide alternate financial assurance as specified in this
36 section within 30 days after notification of the disallowance.

37 (9) The owner or operator is no longer required to submit the items specified in
38 subsection (f)(3) of this section when:

39 (A) an owner or operator substitutes alternate financial assurance as specified in
40 this section; or

41 (B) the Department releases the owner or operator from the requirements in
42 accordance with subsection (j) of this section.

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 (10) An owner or operator may meet the requirements of this section by obtaining a
2 written guarantee. The guarantor shall be the direct or higher-tier parent corporation as
3 defined in section 66260.10 of the owner or operator, a firm whose parent corporations
4 is also the parent corporation of the owner or operator, or a firm with a “substantial
5 business relationship” with the owner or operator. The guarantor shall meet and comply
6 with the requirements for owners or operators in subsections (f)(1) through (f)(8) of this
7 section and shall comply with the terms of the guarantee. The guarantee shall be on the
8 official letterhead stationery of the parent corporation. The guarantee shall contain an
9 original signature which shall be formally witnessed or notarized, and the wording shall
10 be identical to the wording specified in section 66264.151, subsection (h). A certified
11 copy of the guarantee shall accompany the items sent to the Department as specified in
12 subsection (f)(3) of this section. One of these items must be the letter from the
13 guarantor's chief financial officer. If the guarantor's parent corporation is also the parent
14 corporation of the owner or operator, the letter must describe the value received in
15 consideration of the guarantee. If the guarantor is a firm with a “substantial business
16 relationship” with the owner or operator, this letter must describe this “substantial
17 business relationship” and the value received in consideration of the guarantee. The
18 terms of the guarantee shall provide that:

19 (A) if the owner or operator fails to perform final closure of a facility covered by
20 the guarantee in accordance with the closure plan and other permit requirements
21 whenever required to do so, the guarantor shall do so or establish a trust fund as
22 specified in subsection (a) of this section in the name of the owner or operator;

23 (B) the guarantee shall remain in force unless the guarantor sends notice of
24 cancellation by certified mail to the owner or operator and to the Department.
25 Cancellation shall not occur, however, during the 120 days beginning on the date
26 of receipt of the notice of cancellation by both the owner or operator and the
27 Department, as evidenced by the return receipts;

28 (C) if the owner or operator fails to provide alternate financial assurance as
29 specified in this section and obtain the written approval of such alternate
30 assurance from the Department within 90 days after receipt by both the owner or
31 operator and the Department of a notice of cancellation of the guarantee from the
32 guarantor, the guarantor shall provide such alternative financial assurance in the
33 name of the owner or operator.

34 (11) The owner or operator shall establish a trust fund that conforms to subsection (a) of
35 this section within 180 days of the effective date of this section or the date of the next
36 submittal required by subsection (f)(5) of this section, whichever is later. The value of
37 the trust fund must be equal to 20 percent of the current closure cost estimate as
38 specified in section 66264.142. The owner or operator shall make the payments into the
39 trust fund according to the following schedule:

40 (A) an initial payment upon the establishment of the trust fund in an amount
41 equal to two percent of the current closure cost estimate as specified in section
42 66264.142;

1 (B) subsequent annual payments in an amount equivalent to two percent of the
2 current closure cost estimate as specified in section 66264.142 until the value of
3 the trust fund is equal to 20 percent of the current closure cost estimate; and
4 (C) upon meeting the requirements of paragraph (B), the trust fund must be
5 maintained at 20 percent of the current closure cost estimate, at a minimum.

6 (12) An owner or operator may not rely on any assets to meet the requirements of this
7 section if those same assets serve as the basis of satisfying any financial assurance or
8 financial guarantee requirement imposed by any other “governmental agency,” as
9 defined in California Civil Code section 1633.2(i).

- 10 (g) Use of multiple financial mechanisms.
- 11 ...
- 12 (h) Use of a financial mechanism for multiple facilities.
- 13 ...
- 14 (i) Alternative Financial Mechanism for Closure Costs.
- 15 ...
- 16 (j) Release of the owner or operator from the requirements of this section.
- 17 ...

18
19 *Note: Authority cited: Sections 25150, 25159, 25159.5, 25200.21, ~~and~~ 25245, 58004, and*
20 *58012, Health and Safety Code. Reference: Sections 25200.21 and 25245, Health and Safety*
21 *Code; 40 CFR Section 264.143.*

22
23 **§ 66264.144. Cost Estimate for Postclosure Care.**

24 (a) The owner or operator of a disposal surface impoundment, disposal miscellaneous unit,
25 land treatment unit, or landfill unit, or of a surface impoundment or waste pile required under
26 section 66264.228 and section 66264.258 to prepare a contingent closure and postclosure
27 plan, shall prepare and submit to the Department a detailed written estimate, in current
28 dollars, of the annual cost of postclosure monitoring and maintenance of the facility in
29 accordance with the applicable postclosure regulations in sections 66264.117 through
30 66264.120, 66264.228, 66264.258, 66264.280, 66264.310 and 66264.603.

31 (1) The postclosure cost estimate shall be based on the costs to the owner or operator
32 of hiring a third party to conduct postclosure care activities. A third party is a party who
33 is neither a parent nor a subsidiary of the owner or operator. (See definition of “parent
34 corporation” in section 66260.10).

35 (2) The postclosure cost estimate is calculated by multiplying the annual postclosure
36 cost estimate by ~~the number of 30 years or as of postclosure care~~ required under
37 section 66264.117. The Department may reset this period to 30 years each time the
38 postclosure permit is issued or renewed. This period must be consistent with
39 determinations made under section 66264.117.

40 (b) During the active life of the facility, the owner or operator shall adjust the postclosure
41 cost estimate for inflation within 60 days prior to the anniversary date of the establishment of
42 the financial instrument(s) used to comply with section 66264.145. For owners or operators

1 using the financial test or corporate guarantee, the postclosure cost estimate shall be
 2 updated for inflation within 30 days after the close of the firm's fiscal year and before the
 3 submission of updated information to the Department as specified in section
 4 66264.145(f)(5). The adjustment shall be made by recalculating the postclosure cost
 5 estimate in current dollars or by using an inflation factor derived from the most recent
 6 Implicit Price Deflator for Gross National Product published by the U.S. Department of
 7 Commerce in its Survey of Current Business as specified in ~~subsections (b)(1) and (b)(2) of~~
 8 ~~this section~~ paragraphs (1) and (2) of this subsection. The inflation factor is the result of
 9 dividing the latest published annual Deflator by the Deflator for the previous year.

10 (1) The first adjustment is made by multiplying the postclosure cost estimate by the
 11 inflation factor. The result is the adjusted postclosure cost estimate.

12 (2) Subsequent adjustments are made by multiplying the latest adjusted postclosure
 13 cost estimate by the latest inflation factor.

14 (c) During the active life of the facility, the owner or operator shall revise the postclosure
 15 cost estimate within 30 days after the Department has approved the request to modify the
 16 postclosure plan, if the change in the postclosure plan increases the cost of postclosure
 17 care. The revised postclosure cost estimate shall be adjusted for inflation as specified in
 18 subsection (b)~~section 66264.144(b)~~.

19 (d) The owner or operator shall keep the following at the facility during the operating life of
 20 the facility: the latest postclosure cost estimate prepared in accordance with ~~section~~
 21 ~~66264.144(a) and (e)~~ subsections (a) and (c), and, when this estimate has been adjusted in
 22 accordance with subsection (b)~~section 66264.144(b)~~, the latest adjusted postclosure cost
 23 estimate.

24
 25 *Note: Authority cited: Sections 208, 25150, 25159, 25159.5, 25200.21, and 25245, 58004, and*
 26 *58012, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40 CFR*
 27 *Section 264.144.*

28
 29 **§ 66264.145. Financial Assurance for Postclosure Care.**

30 The owner or operator of a hazardous waste management unit subject to the requirements
 31 of section 66264.144 shall establish and demonstrate to the Department financial assurance
 32 for postclosure care in accordance with the approved postclosure plan for the facility 60
 33 days prior to the initial receipt of hazardous waste or the effective date of the regulation,
 34 whichever is later. The owner or operator shall choose from the following options as
 35 specified in subsections (a) through (f) and (i) of this section.

36 (a) Postclosure trust fund.

37 ...

38 (b) Surety bond guaranteeing payment into a postclosure trust fund.

39 ...

40 (c) Surety bond guaranteeing performance of postclosure care.

41 ...

42 (d) Postclosure letter of credit.

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 ...

2 (e) Postclosure insurance.

3 (1) An owner or operator may satisfy the requirements of this section by obtaining
4 postclosure insurance which conforms to the requirements of this subsection and
5 submitting a certificate of such insurance to the Department. An owner or operator of a
6 new facility shall submit the certificate of insurance to the Department at least 60 days
7 before the date on which hazardous waste is first received for disposal. The insurance
8 shall be effective before this initial receipt of hazardous waste. At a minimum, the
9 insurer shall be:

- 10 (A) licensed to transact the business of insurance in California; or
11 (B) eligible to provide insurance as an excess or surplus lines insurer, in ~~one or~~
12 ~~more States~~ California. Any excess or surplus insurance relied upon by the
13 owner or operator to meet the requirements of this subsection shall be transacted
14 by and through an excess or surplus lines broker currently licensed by the
15 California Department of Insurance.

16 (2) The wording of the certificate of insurance shall be identical to the wording specified
17 in section 66264.151, subsection (e). The certificate of insurance shall contain original
18 signatures.

19 ...

20 (f) Financial test and guarantee for postclosure care.

21 (1) An owner or operator may satisfy the requirements of this section by demonstrating
22 that he or she passes a financial test as specified in this section. To pass this test the
23 owner or operator shall meet the criteria of either subsections (f)(1)(A) or (f)(1)(B) and
24 comply with subsection (f)(12) of this section.

25 (A) the owner or operator shall have all the following:

- 26 1. two of the following three ratios: a ratio of total liabilities to net worth
27 less than 2.0; a ratio of the sum of net income plus depreciation, depletion
28 and amortization to total liabilities greater than 0.1; and a ratio of current
29 assets to current liabilities greater than 1.5; ~~and~~
30 2. a current corporate credit rating of AAA, AA, A or BBB as issued by
31 Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; ~~and~~
32 3. net working capital and tangible net worth each at least six times the
33 sum of the current closure and postclosure cost estimates and the current
34 plugging and abandonment cost estimates; ~~and~~
35 3.4. tangible net worth of at least \$40 ~~\$20~~ million; and
36 4.5. assets in the United States amounting to at least 90 percent of total
37 assets or at least six times the sum of the current closure and postclosure
38 cost estimates for all of the owner's or operator's hazardous waste
39 facilities regulated by the Department and the current plugging and
40 abandonment cost estimates.

41 (B) the owner or operator shall have all the following:

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

- 1 1. a current rating for his or her most recent bond issuance of AAA, AA, A
2 or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued
3 by Moody's; ~~and~~
 - 4 2. tangible net worth at least six times the sum of the current closure and
5 postclosure cost estimates and the current plugging and abandonment
6 cost estimates; ~~and~~
 - 7 3. tangible net worth of at least \$~~10-20~~ million; and
 - 8 4. assets located in the United States amounting to at least 90 percent of
9 total assets or at least six times the sum of the current closure and
10 postclosure cost estimates for all of the owner's or operator's hazardous
11 waste facilities regulated by the Department and the current plugging and
12 abandonment cost estimates.
- 13 (2) The phrase "current closure and postclosure cost estimates" as used in subsection
14 (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1
15 ~~through 4~~ through 6 of the letter from the owner's or operator's chief financial officer
16 (section ~~66264.151-66265.151~~, subsection (f)). The phrase "current plugging and
17 abandonment cost estimates" as used in subsection (f)(1) of this section refers to the
18 cost estimates required to be shown in paragraphs 1 ~~through 4~~ through 6 of the letter
19 from the owner's or operator's chief financial officer.
- 20 (3) To demonstrate that this test has been met, the owner or operator shall submit the
21 following items to the Department:
- 22 (A) a letter signed by the owner's or operator's chief financial officer and worded
23 as specified in section 66264.151, subsection (f). The letter shall be on the
24 owner's or operator's official letterhead stationery, and shall contain an original
25 signature; ~~and~~
 - 26 (B) a copy of the owner's or operator's financial statements and the independent
27 certified public accountant's report on examination of the owner's or operator's
28 financial statements for the latest completed fiscal year; and
 - 29 (C) a special report from the owner's or operator's independent certified public
30 accountant to the owner or operator ~~stating that~~ includes the following:
 - 31 1. a statement that the independent certified public accountant has
32 compared the data which the letter from the chief financial officer specified
33 as having been derived from the independently audited, year-end financial
34 statements for the latest fiscal year with the amounts in such financial
35 statements; and
 - 36 2. ~~in connection with that procedure, no matters came to the independent~~
37 ~~certified public accountant's attention which caused a belief that the~~
38 ~~specified data should be adjusted.~~ identification and description of the
39 specific accounting standards and guidance relied upon to prepare the
40 report.

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

- 1 (4) An owner or operator of a new facility shall submit the items specified in subsection
2 (f)(3) of this section to the Department at least 60 days before the date on which
3 hazardous waste is first received for disposal.
- 4 (5) After the initial submission of items specified in subsection (f)(3) of this section, the
5 owner or operator shall send updated information to the Department within 90 days after
6 the close of each succeeding fiscal year. This information shall consist of all three items
7 specified in subsection (f)(3) of this section.
- 8 (6) If the owner or operator no longer meets the requirements of subsection (f)(1) of this
9 section, the owner or operator shall send notice to the Department of the intent to
10 establish alternate financial assurance as specified in this section. The notice shall be
11 sent by certified mail within 90 days after any occurrence that prevents the owner or
12 operator from meeting the requirements. The owner or operator shall provide the
13 alternate financial assurance within 120 days after such occurrence.
- 14 (7) The Department may, based on a reasonable belief that the owner or operator may
15 no longer meet the requirements of subsection (f)(1) of this section, require reports of
16 financial condition at any time from the owner or operator in addition to those specified
17 in subsection (f)(3) of this section. If the Department finds, on the basis of such reports
18 or other information, that the owner or operator no longer meets the requirements of
19 subsection (f)(1) of this section, the owner or operator shall provide alternate financial
20 assurance as specified in this section within 30 days after notification of such a finding.
- 21 (8) The Department may disallow use of this test on the basis of qualifications in the
22 opinion expressed by the independent certified public accountant in his or her report on
23 examination of the owner's or operator's financial statements (see subsection (f)(3)(B)
24 of this section). An adverse opinion or a disclaimer of opinion shall be cause for
25 disallowance. The Department shall evaluate other qualifications on an individual basis.
26 The owner or operator shall provide alternate financial assurance as specified in this
27 section within 30 days after notification of the disallowance.
- 28 (9) During the period of postclosure care, the Department shall approve a decrease in
29 the current postclosure cost estimate for which this test demonstrates financial
30 assurance if the owner or operator demonstrates to the Department that the amount of
31 the cost estimate exceeds the remaining cost of postclosure care.
- 32 (10) The owner or operator is no longer required to submit the items specified in
33 subsection (f)(3) of this section when:
- 34 (A) an owner or operator substitutes alternate financial assurance as specified in
35 this section; or
- 36 (B) the Department releases the owner or operator from the requirements of this
37 section in accordance with subsection (j) of this section.
- 38 (11) An owner or operator may meet the requirements for this section by obtaining a
39 written guarantee. The guarantor shall be the direct or higher-tier parent corporation as
40 defined in section 66260.10, of the owner or operator, a firm whose parent corporation
41 is also the parent corporation of the owner or operator, or a firm with a "substantial
42 business relationship" with the owner or operator. The guarantor shall meet the

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 requirements for owners or operators in subsections (f)(1) through (f)(9) of this section
2 and shall comply with the terms of the guarantee. The guarantee shall contain an
3 original signature which shall be formally witnessed or notarized and the wording of the
4 guarantee shall be identical to the wording specified in section 66264.151, subsection
5 (h). A certified copy of the guarantee shall accompany the items sent to the Department
6 as specified in subsection (f)(3) of this section. One of these items must be the letter
7 from the guarantor's chief financial officer. If the guarantor's parent corporation is also
8 the parent corporation of the owner or operator, the letter must describe the value
9 received in consideration of the guarantee. If the guarantor is a firm with a "substantial
10 business relationship" with the owner or operator, this letter must describe this
11 "substantial business relationship" and the value received in consideration of the
12 guarantee. The terms of the guarantee shall provide that:

13 (A) if the owner or operator fails to perform postclosure care of a facility covered
14 by the guarantee in accordance with the postclosure plan and other permit
15 requirements whenever required to do so, the guarantor shall do so or establish
16 a trust fund as specified in subsection (a) of this section in the name of the owner
17 or operator;

18 (B) the guarantee shall remain in force unless the guarantor sends notice of
19 cancellation by certified mail to the owner or operator and to the Department.
20 Cancellation shall not occur, however, during the 120 days beginning on the date
21 of receipt of the notice of cancellation by both the owner or operator and the
22 Department, as evidenced by the return receipts;

23 (C) if the owner or operator fails to provide alternate financial assurance as
24 specified in this section and obtain the written approval of such alternate
25 assurance from the Department within 90 days after receipt by both the owner or
26 operator and the Department of a notice of cancellation of the guarantee from the
27 guarantor, the guarantor shall provide such alternate financial assurance in the
28 name of the owner or operator.

29 (12) The owner or operator shall establish a trust fund that conforms to subsection (a),
30 within 180 days of the effective date of this section or the date the next submittal
31 required by subsection (f)(5), whichever is later. The value of the trust fund must be
32 equal to 20 percent of the current postclosure cost estimate as specified in section
33 66264.144. The owner or operator shall make payments into the trust fund according to
34 the following schedule:

35 (A) an initial payment upon the establishment of the trust fund in an amount
36 equal to two percent of the current postclosure care costs as specified in section
37 66264.144;

38 (B) subsequent annual payments in an amount equivalent to two percent of the
39 current postclosure care cost estimate as specified in section 66264.144 until the
40 value of the trust fund is equal to 20 percent of the postclosure care cost
41 estimate; and

1 (C) upon meeting the requirements of paragraph (B), the trust fund must be
2 maintained at 20 percent of the current postclosure care cost estimate, at a
3 minimum.

4 (13) An owner or operator may not rely on any assets to meet the requirements of this
5 section if those same assets serve as the basis of satisfying any financial assurance or
6 financial guarantee requirement imposed by any other "governmental agency," as
7 defined in California Civil Code section 1633.2(i).

8 (g) Use of multiple financial mechanisms.

9 ...

10 (h) Use of a financial mechanism for multiple facilities for postclosure care.

11 ...

12 (i) Alternative Financial Mechanism for Postclosure Care.

13 ...

14 (j) Release of the owner or operator from financial assurance requirements for postclosure
15 care.

16 ...

17

18 *Note: Authority cited: Sections 25150, 25159, 25159.5, 25200.21 and 25245, 58004, and*
19 *58012, Health and Safety Code. Reference: Sections 25200.21 and 25245, Health and Safety*
20 *Code; 40 CFR Section 264.145.*

21

22 **§ 66264.146. Use of a Mechanism for Financial Assurance of Both Closure and Post-**
23 **Closure Care.**

24 An owner or operator may satisfy the requirements for financial assurance for both closure
25 and post-closure care for one or more facilities by using a trust fund, surety bond, letter of
26 credit, insurance, financial test, corporate guarantee, or alternative mechanism, that meets
27 the specifications for the mechanism in both section 66264.143 and section 66264.145 for
28 each facility. The amount of funds available through the mechanism shall be no less than
29 the sum of funds that would be available if a separate mechanism had been established and
30 maintained for financial assurance of closure and of post-closure care.

31

32 *Note: Authority cited: Sections 208, 25150, 25159, 25159.5, 25200.21 and 25245, 58004, and*
33 *58012, Health and Safety Code. Reference: Sections 25200.21 and 25425, Health and Safety*
34 *Code; 40 CFR Section 264.146.*

35

36 **§ 66264.147. Liability Requirements.**

37 (a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous
38 waste transfer, treatment, storage or disposal facility or a group of such facilities, shall
39 demonstrate to the Department financial responsibility for bodily injury and property damage
40 to third parties caused by sudden accidental occurrences arising from operations of the
41 facility or group of facilities. The owner or operator shall have and maintain liability coverage
42 for sudden accidental occurrences in the amount of at least \$1 million per occurrence with

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 an annual aggregate of at least \$2 million, exclusive of legal defense costs. This liability
2 coverage may be demonstrated as specified in subsections (a)(1) through (7) of this section.

3 (1) An owner or operator may demonstrate the required liability coverage by having
4 liability insurance as specified in this subsection.

5 (A) At a minimum, the insurer shall be:

6 1. licensed to transact the business of insurance in California, or

7 2. eligible to provide insurance as an excess or surplus lines insurer, in

8 one or more states-California. This insurance shall be transacted by and

9 through an excess or surplus lines broker currently licensed by the

10 California Department of Insurance.

11 (B) Each insurance policy shall be amended by attachment of the Hazardous
12 Waste Facility Liability Endorsement or evidenced by a Certificate of Liability
13 Insurance. If requested by the Department, the owner or operator shall provide a
14 copy of the insurance policy; the copy of the insurance policy shall contain
15 original signatures.

16 (C) The wording of the liability endorsement shall be identical to the wording
17 specified in section 66264.151, subsection (i). The liability endorsement shall
18 contain original signatures and shall be submitted to the Department.

19 (D) The wording of the certificate of insurance shall be identical to the wording
20 specified in section 66264.151, subsection (j). The certificate of insurance shall
21 contain original signatures and shall be submitted to the Department.

22 (E) An owner or operator of a new facility shall submit the liability endorsement or
23 certificate of insurance to the Department at least 60 days before the date on
24 which hazardous waste is first received for transfer, treatment, storage or
25 disposal. The insurance shall be effective before this initial receipt of hazardous
26 waste.

27 ...

28 (b) Coverage for nonsudden accidental occurrences. An owner or operator of a surface
29 impoundment, as defined in section 66260.10, landfill, as defined in section 66260.10, land
30 treatment facility, as defined in section 66260.10 or disposal miscellaneous unit which is
31 used to manage hazardous waste, or a group of such facilities, shall demonstrate to the
32 Department financial responsibility for bodily injury and property damage to third parties
33 caused by nonsudden accidental occurrences arising from operations of the facility or group
34 of facilities. The owner or operator shall have and maintain liability coverage for nonsudden
35 accidental occurrences in the amount of at least \$3 million per occurrence, as defined in
36 section 66260.10, with an annual aggregate of at least \$6 million, exclusive of legal defense
37 costs. An owner or operator who must meet the requirements of this section may combine
38 the required per-occurrence coverage levels for sudden and nonsudden accidental
39 occurrences into a single per-occurrence level, and combine the required annual aggregate
40 coverage levels for sudden and nonsudden accidental occurrences into a single annual
41 aggregate level. Owners or operators who combine coverage levels for sudden and
42 nonsudden accidental occurrences must maintain liability coverage in the amount of at least

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 \$4 million per occurrence and \$8 million annual aggregate. This liability coverage may be
2 demonstrated, as specified in subsections (b)(1) through (b)(7) of this section.

3 (1) An owner or operator may demonstrate the required liability coverage by obtaining
4 liability insurance as specified in this subsection.

5 (A) At a minimum, the insurer shall be:

- 6 1. licensed to transact the business of insurance in California, or
7 2. eligible to provide insurance as an excess or surplus lines insurer, in
8 California. This insurance shall be transacted by and through an excess or
9 surplus lines broker currently licensed by the California Department of
10 Insurance.

11 (B) Each insurance policy shall be amended by attachment of the Hazardous
12 Waste Facility Liability Endorsement or evidenced by a Certificate of Liability
13 Insurance. If requested by the Department, the owner or operator shall provide a
14 copy of the insurance policy; the copy of the insurance policy shall contain
15 original signatures.

16 (C) The wording of the liability endorsement shall be identical to the wording
17 specified in section 66264.151, subsection (i). The liability endorsement shall
18 contain original signatures and shall be submitted to the Department.

19 (D) The wording of the certificate of insurance shall be identical to the wording
20 specified in section 66264.151, subsection (j). The certificate of insurance shall
21 contain original signatures and shall be submitted to the Department.

22 (E) An owner or operator of a new facility shall submit the liability endorsement or
23 certificate of insurance to the Department at least 60 days before the date on
24 which hazardous waste is first received for transfer, treatment, storage or
25 disposal. The insurance shall be effective before this initial receipt of hazardous
26 waste.

27 ...

28 (c) Request for variance.

29 ...

30 (d) Adjustments by the Department.

31 ...

32 (e) Period of coverage.

33 ...

34 (f) Financial test for liability coverage.

35 (1) An owner or operator may satisfy the requirements of this section by demonstrating
36 that he or she passes a financial test as specified in this subsection. To pass this test
37 the owner or operator shall meet the criteria of subsection (f)(1)(A) or (B).

38 (A) The owner or operator shall have all the following:

- 39 1. net working capital and tangible net worth each at least six times the
40 amount of liability coverage to be demonstrated by this test; ~~and~~
41 2. a current corporate credit rating of AAA, AA, A or BBB as issued by
42 Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; ~~and~~

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

- 1 ~~2.3.~~ tangible net worth of at least \$~~40~~20 million; and
- 2 ~~3.4.~~ assets in the United States amounting to either:
- 3 a. at least 90 percent of total assets; or
- 4 b. at least six times the amount of liability coverage to be
- 5 demonstrated by this test.
- 6 (B) The owner or operator shall have all the following:
- 7 1. a current rating for the most recent bond issuance of AAA, AA, A or
- 8 BBB as issued by Standard and Poor's, or Aaa, Aa, A or Baa as issued by
- 9 Moody's; ~~and~~
- 10 2. tangible net worth of at least \$~~40~~20 million; ~~and~~
- 11 3. tangible net worth at least six times the amount of liability coverage to
- 12 be demonstrated by this test; and
- 13 4. assets in the United States amounting to either:
- 14 a. at least 90 percent of total assets; or
- 15 b. at least six times the amount of liability coverage to be
- 16 demonstrated by this test.
- 17 (2) The phrase "amount of liability coverage" as used in subsection (f)(1) of this section
- 18 refers to the annual aggregate amounts for which coverage is required under
- 19 subsections (a) and (b) of this section.
- 20 (3) To demonstrate that this test can be met, the owner or operator shall submit the
- 21 following items to the Department:
- 22 (A) a letter signed by the owner's or operator's chief financial officer and worded
- 23 as specified in section 66264.151, subsection (g). The letter shall be on the
- 24 official letterhead stationary of the owner or operator, and shall contain an
- 25 original signature. An owner or operator may use the financial test to
- 26 demonstrate both assurance for closure or postclosure care, as specified by
- 27 sections 66264.143, subsection (f), 66264.145, subsection (f), 66265.143,
- 28 subsection (e) and 66265.145, subsection (e), and liability coverage as specified
- 29 in subsections (a) and (b) of this section. If an owner or operator is using the
- 30 financial test to cover both forms of financial responsibility, a separate letter is not
- 31 required;
- 32 (B) a copy of the owner's or operator's financial statements and the independent
- 33 certified public accountant's report on examination of the owner's or operator's
- 34 financial statements for the latest completed fiscal year;
- 35 (C) a special report from the owner's or operator's independent certified public
- 36 accountant to the owner or operator ~~stating that~~ includes the following:
- 37 1. a statement that the independent certified public accountant has
- 38 compared the data which the letter from the chief financial officer specifies
- 39 as having been derived from the independently audited, year-end financial
- 40 statements for the latest fiscal year with the amounts in such financial
- 41 statements; and

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 2. ~~in connection with that procedure, no matters came to the independent~~
2 ~~certified public accountant's attention which caused that accountant to~~
3 ~~believe that the specified data should be adjusted.~~ identification and
4 description of the specific accounting standards and guidance relied upon
5 to prepare the report.

6 (4) An owner or operator of a new facility shall submit the items specified in subsection
7 (f)(3) of this section to the Department at least 60 days before the date on which
8 hazardous waste is first received for transfer, treatment, storage or disposal.

9 (5) After the initial submission of items specified in subsection (f)(3) of this section, the
10 owner or operator shall send updated information to the Department within 90 days after
11 the close of each succeeding fiscal year. This information shall consist of all items
12 specified in subsection (f)(3) of this section.

13 (6) If the owner or operator no longer meets the requirements of subsection (f)(1) of this
14 section, liability coverage shall be obtained for the entire amount of coverage as
15 described in this section by use of the financial mechanisms described in this section.
16 Notice shall be sent to the Department of the owner's or operator's intent to obtain the
17 required coverage; notice shall be sent by either registered mail or by certified mail
18 within 90 days after any ~~occurrence~~ occurrence that prevents the owner or operator from
19 meeting the test requirements. Evidence of liability coverage shall be submitted to the
20 Department within 90 days after any occurrence that prevents the owner or operator
21 from meeting the requirements.

22 (7) The Department may, based on a reasonable belief that the owner or operator no
23 longer meets the requirements of subsection (f)(1) of this section, require reports of
24 financial condition at any time from the owner or operator in addition to those specified
25 in subsection (f)(3) of this section. If the Department finds, on the basis of such reports
26 or other information, that the owner or operator no longer meets the requirements of
27 subsection (f)(1) of this section, the owner or operator shall provide alternate financial
28 assurance for closure and postclosure care and evidence of the required liability
29 coverage as specified in this section within 30 days after notification of such a finding.

30 (8) The Department may disallow use of this test on the basis of qualifications in the
31 opinion expressed by the independent certified public accountant in his or her report on
32 examination of the owner's or operator's financial statements (see subsection (f)(3)(B)
33 of this section). An adverse opinion or a disclaimer of opinion will be cause for
34 disallowance. The Department will evaluate other qualifications on an individual basis.
35 The owner or operator shall provide evidence of liability coverage for the amount
36 required as specified in this section within 30 days after notification of disallowance.

37 (9) The owner or operator is no longer required to submit the items specified in
38 subsection (f)(3) of this section when:

39 (A) an owner or operator substitutes alternate financial assurance for closure and
40 postclosure care and evidence of liability insurance as specified in this section; or

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 (B) the Department releases the owner or operator from the requirements of this
2 section in accordance with sections 66264.143, subsection (j), 66264.145,
3 subsection (j) and 66264.147, subsection (e).

4 (g) Guarantee for liability coverage.

5 ...

6 (h) Letter of credit for liability coverage.

7 ...

8 (i) Payment bond for liability coverage.

9 ...

10 (j) Trust fund for liability coverage.

11 ...

12 (k) Liability Coverage -Alternative Mechanism.

13 ...

14
15 *Note: Authority cited: Sections 25150, 25159, 25159.5, 25200.21, 25245, 58004 and 58012,*
16 *Health and Safety Code. Reference: Sections 25200.1 and 25245, Health and Safety Code; 40*
17 *CFR Section 264.147.*

18 ...

19 ...

20 ...

21 **§ 66264.151. Wording of the Instruments.**

22 ...

23 (e) A certificate of insurance, as specified in section 66264.143, subsection (e) or section
24 66264.145, subsection (e) or section 66265.143, subsection (d) or section 66265.145,
25 subsection (d) of this division, shall be worded as follows, except that instructions in
26 brackets are to be replaced with the relevant information and the brackets deleted:

27

28 CERTIFICATE OF INSURANCE FOR CLOSURE OR POSTCLOSURE CARE

29 Name and Address of Insurer (herein called the "Insurer"):

30 California License Number: [insert license number]

31 Admitted [] Excess or Surplus Lines []

32 Name and Address of Insured (herein called the "Insured"):

33 Facilities Covered: [List for each facility/transportable treatment unit (TTU): The
34 EPA Identification Number, name, address, and the amount of insurance for closure
35 and/or the amount for postclosure care (these amounts for all facilities covered shall
36 total the face amount shown below).]

37 Face Amount:

38 Policy Number:

39 Effective Date:

40

41 The Insurer hereby certifies that it has issued to the Insured the policy of insurance
42 identified above to provide financial assurance for [insert "closure" or "closure and

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 postclosure care" or "postclosure care"] for the facilities/TTU(s) identified above.

2 The Insurer further warrants that such policy conforms in all respects with the
3 requirements of California Code of Regulations, title 22, division 4.5, chapter 14 and 15,
4 article 8, section 66264.143, subsection (e), section 66264.145, subsection (e), section
5 66265.143, subsection (d) and section 66265.145, subsection (d) as applicable and as
6 such regulations were constituted on the date shown below. It is agreed that any provision
7 of the policy inconsistent with such regulations is hereby amended to eliminate such
8 inconsistency.

9 The Insurer certifies that it will not cancel, terminate, or fail to renew this policy except
10 for failure to pay the premium, and that the automatic renewal of the policy provides the
11 insured with the option of renewal at the face amount of the expiring policy. If there is a
12 failure to pay the premium and the Insurer elects to cancel, terminate, or not renew the
13 policy, the Insurer will send notice by either registered or certified mail to the owner or
14 operator and the Department of Toxic Substances Control (DTSC).
15 Cancellation, termination, or failure to renew may not occur, however, during the one
16 hundred twenty (120) days beginning with the date of receipt of the notice by the owner or
17 operator and the DTSC as evidence by the return receipt. Cancellation, termination or
18 failure to renew will not occur and the policy will remain in full force and effect in the event
19 that on or before the date of expiration:

- 20 (1) The DTSC deems the facility/TTU abandoned; or
21 (2) The permit is terminated or revoked or a new permit is denied by the DTSC; or
22 (3) Closure is ordered by the DTSC; or any other State or Federal agency, or a court of
23 competent jurisdiction; or
24 (4) The owner or operator is named as a debtor in a voluntary or involuntary
25 proceeding under Title 11 (Bankruptcy) U. S. Code; or
26 (5) The premium due is paid. The Insurer certifies that:
27 (A) it is licensed to transact the business of insurance California; or
28 (B) it is eligible to provide insurance as an excess or surplus lines insurer,
29 California and this insurance has been transacted by and through a surplus
30 lines broker currently licensed by the California Department of Insurance.

31 Whenever requested by the Department of Toxic Substances Control (DTSC) of the
32 State of California, the Insurer agrees to furnish to DTSC a duplicate original of the original
33 policy listed above, including all endorsements thereon.

34 In the event this policy is used in combination with another mechanism, this policy
35 shall be considered [insert "primary" or "excess"] coverage.

36 The parties below certify that the wording of this certificate is identical to the wording
37 specified in California Code of Regulations, title 22, section 66264.151, subsection (e)
38 and is being executed in accordance with the requirements of California Code of
39 Regulations, title 22, division 4.5, chapters 14 and 15, article 8.

40
41 [Authorized signature for Insurer]

42 [Name of person signing]

1 [Title of person signing] Signature
2 of witness or notary: [Date]

3 ...

4 (f) A letter from the chief financial officer, as specified in section 66264.143, subsection (f)
5 or section 66264.145, subsection (f), or section 66265.143, subsection (e) or section
6 66265.145, subsection (e) of this division, shall be worded as follows, except that
7 instructions in brackets are to be replaced with the relevant information and the brackets
8 deleted:

9

10 LETTER FROM CHIEF FINANCIAL OFFICER

11 Department of Toxic Substances Control Financial
12 Responsibility Section
13 8800 Cal Center Drive Sacramento,
14 California 95826

15

16 I am the chief financial officer of [insert name and address of firm]. This letter is in
17 support of this firm's use of the financial test to demonstrate financial assurance for closure
18 and/or postclosure costs, as specified in California Code of Regulations, title 22, division
19 4.5, chapter 14 and 15, article 8.

20 [Fill out the following paragraphs regarding facilities/transportable treatment units (TTU)
21 and associated cost estimates. If your firm has no facilities/TTUs that belong in a particular
22 paragraph, write "None" in the space indicated. For each facility/TTU, include its EPA
23 Identification Number, name, address and current closure and/or postclosure cost
24 estimates. Identify each cost estimate separately as to whether it is for closure or
25 postclosure care.]

26

27 1. This firm is the owner or operator of the following facilities/TTUs for which financial
28 assurance for closure or postclosure care is demonstrated through the financial test
29 specified in section 66264.143, subsection (f), section 66264.145, subsection (f), section
30 66265.143, subsection (e), and section 66265.145, subsection (e) of California Code of
31 Regulations, title 22, division 4.5, chapter 14 and 15, article 8. The current closure and/or
32 postclosure cost estimates covered by the test are shown for each facility/TTU: _____.

33

34 2. This firm guarantees, through the guarantee specified in section 66264.143,
35 subsection (f), section 66264.145, subsection (f), section 66265.143, subsection (e), and
36 section 66265.145, subsection (e) of California Code of Regulations, title 22, division
37 4.5, chapter 14 and 15, article 8, the closure and/or postclosure care of the following
38 facilities/TTUs owned or operated by the guaranteed party. The current cost estimates
39 for the closure or postclosure care so guaranteed are shown for each facility/TTU: ____.

40

41 The firm identified above is [insert one or more: (1) The direct or higher-tier parent
corporation of the owner or operator; (2) owned by the same parent corporation as the

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 parent corporation of the owner or operator, and receiving the following value in
2 consideration of this guarantee [insert dollars]; or (3) engaged in the following substantial
3 business relationship with the owner or operator [insert business relationship], and
4 receiving the following value in consideration of the guarantee [insert dollars]]. [Attach a
5 written description of the business relationship or a copy of the contract establishing such
6 relationship to this letter.]
7

8 3. In states where the U.S. Environmental Protection Agency is not administering the
9 financial requirements of subpart H of 40 CFR parts 264 and 265, this firm, as owner or
10 operator or guarantor, is demonstrating financial assurance for the closure or postclosure
11 care of the following facilities/TTUs through the use of a test equivalent or substantially
12 equivalent to the financial test specified in subpart H of 40 CFR parts 264 and 265 or
13 California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8. The
14 current closure and/or postclosure cost estimates covered by such a test are shown for
15 each facility/TTU:_____.

16
17 4. This firm is the owner or operator of the following hazardous waste management
18 facilities/TTUs for which financial assurance for closure or, if a disposal facility, postclosure
19 care, is not demonstrated either to U.S. Environmental Protection Agency or a State
20 through the financial test or any other financial assurance mechanism specified in subpart
21 H of 40 CFR parts 264 and 265, California Code of Regulations, title 22, division 4.5,
22 chapter 14 or 15, article 8 or equivalent or substantially equivalent State mechanisms. The
23 current closure and/or postclosure cost estimates not covered by such financial assurance
24 are shown for each facility/TTU:_____.

25
26 5. This firm is using the financial test, or its equivalent, to provide financial assurance
27 or guarantee to the following governmental agencies: [list each agency and the amount
28 assured]
29

30 56. This firm is the owner or operator of the following Underground Injection Control
31 facilities for which financial assurance for plugging and abandonment is required under 40
32 CFR part 144. The current closure cost estimates as required by 40 CFR are shown for
33 each facility:_____.

34 This firm [insert "is" or "is not"] required to file a Form 10K with the Securities and
35 Exchange Commission (SEC) for the latest fiscal year.

36 The fiscal year of this firm ends on [insert month, day]. The figures for the following
37 items marked with an asterisk are derived from this firm's independently audited, year-end
38 financial statements for the latest completed fiscal year, ended [insert date].

39 This firm is using [insert "Alternative I" or "Alternative II"].

40 [Fill in Alternative I if the criteria of paragraph (f)(1)(A) of sections 66264.143 and
41 66264.145, or of paragraph (e)(1)(A) of sections 66265.143 and 66265.145 of this division
42 are used. Fill in Alternative II of the criteria of paragraph (f)(1)(B) of sections 66264.143

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 and 66265.145, or of paragraph (e)(1)(B) of sections 66265.143 and 66265.145 of this
2 division are used.]

3
4 ALTERNATIVE I

- 5
6 1. Sum of current closure and postclosure cost estimate (total of all cost estimates
7 shown in the ~~five~~six paragraphs above) \$ _____
8 *2. Total liabilities (if any portion of the closure or postclosure cost estimates is included in
9 total liabilities, you may deduct the amount of that portion from this line and add that
10 amount to lines 3 and 4) \$ _____
11 *3. Tangible net worth \$ _____
12 *4. Net worth \$ _____
13 *5. Current assets \$ _____
14 *6. Current liabilities \$ _____
15 7. Net working capital (line 5 minus line 6) \$ _____
16 *8. The sum of net income plus depreciation, depletion, and amortization
17 \$ _____
18 9. Total assets in U.S. (required only if less than 90% of firm's
19 assets are located in the U.S.) \$ _____
20 10. Is line 3 at least \$~~10~~20 million? [Yes/No]
21 11. Is line 3 at least 6 times line 1? [Yes/No]
22 12. Is line 7 at least 6 times line 1? [Yes/No]
23 *13. Are at least 90% of firm's assets located in the U.S.?
24 If not, complete line 14 [Yes/No]
25 14. Is line 9 at least 6 times line 1? [Yes/No]
26 15. Is line 2 divided by line 4 less than 2.0? [Yes/No]
27 16. Is line 8 divided by line 2 greater than 0.1? [Yes/No]
28 17. Is line 5 divided by line 6 greater than 1.5? [Yes/No]
29 18. Current corporate credit rating of this firm,
30 and name of rating service
31 19. Date of corporate credit rating
32 _____

33 ALTERNATIVE II

- 34
35 1. Sum of current closure and postclosure cost estimates [total of all cost estimates
36 shown in the ~~five~~six paragraphs above] \$ _____
37 2. Current bond rating of most recent issuance of this firm and name of rating service
38 _____
39 3. Date of issuance of bond _____
40 4. Date of maturity of bond _____
41 *5. Tangible net worth [if any portion of the closure and postclosure cost estimates is

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

- 1 included in "total liabilities" on your firm's financial statements, you may add the amount of
- 2 that portion to this line] \$ _____
- 3 *6.Total assets in U.S. (required only if less than 90% of firm's assets are located in the
- 4 U.S.) \$ _____
- 5 7. Is line 5 at least \$~~20~~ 40-million? [Yes/No]
- 6 8. Is line 5 at least 6 times line 1? [Yes/No]
- 7 *9. Are at least 90% of firm's assets located in the U.S.? If not, complete line 10
- 8 [Yes/No]
- 9 10. Is line 6 at least 6 times line 1? [Yes/No]

10
11 I hereby certify that the wording of this letter is identical to the wording as specified in
12 California Code of Regulations, title 22, section 66264.151, subsection (f) and is being
13 executed in accordance with the requirements of California Code of Regulations, title 22,
14 division 4.5, chapter 14 and 15, article 8.

15 [Signature]
16 [Name] [Title]
17 [Date]

18
19 (g) A letter from the chief financial officer, as specified in section 66264.147, subsection
20 (f) or section 66265.147, subsection (f) of this division, shall be worded as follows,
21 except that instructions in brackets are to be replaced with the relevant information and
22 the brackets deleted.

23
24 LETTER FROM CHIEF FINANCIAL OFFICER

25
26 Department of Toxic Substances Control
27 Financial Responsibility Section
28 8800 Cal Center Drive
29 Sacramento, California 95826

30
31 I am the chief financial officer of [insert firm's name and address]. This letter is in
32 support of the use of the financial test to demonstrate financial responsibility for liability
33 coverage [insert "and closure and/or postclosure care" if applicable] as specified in
34 California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8.

35 [Fill out the following paragraphs regarding facility(ies)/transportable treatment unit
36 (TTU) and liability coverage. If there are no facility(ies)/ TTU(s) that belong in a particular
37 paragraph, write "None" in the space indicated. For each facility/TTU, include the
38 hazardous waste facility/TTU EPA Identification Number, name, and address, and current
39 liability coverage (indicate sudden and nonsudden coverage amounts separately)].

40 The firm identified above is the owner or operator of the following facility(ies)/TTU(s)
41 for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and
42 nonsudden"] accidental occurrences is being demonstrated through the financial test

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 specified in California Code of Regulations, title 22, division 4.5, chapter 14 and 15,
2 article 8, sections 66264.147 and 66265.147:

3 The firm identified above guarantees, through the guarantee specified in California
4 Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections
5 66264.147 and 66265.147, liability coverage for [insert "sudden" or "nonsudden" or both
6 "sudden and nonsudden"] accidental occurrences at the following facility(ies)/TTU(s)
7 owned or operated by the following:

8 The firm identified above is [insert one or more: (1) the direct or higher tier parent
9 corporation of the owner or operator; (2) owned by the same parent corporation as the
10 parent corporation of the owner or operator, and receiving the following value in
11 consideration of the guarantee [insert dollars]; or (3) engaged in the following substantial
12 business relationship with the owner or operator [insert business relationship], and
13 receiving the following value in consideration of the guarantee [insert dollars]]. [Attach a
14 written description of the business relationship or a copy of the contract establishing such
15 relationship to this letter.]

16 [If you are using the financial test to demonstrate coverage of both liability and
17 financial assurance for closure and/or postclosure care, fill in the following five paragraphs
18 regarding facilities and associated closure and postclosure cost estimates. If there are no
19 facilities that belong in a particular paragraph, write "None" in the space indicated. For
20 each facility/TTU, include its hazardous waste facility/TTU EPA Identification Number,
21 name, address and current closure and/or postclosure cost estimates. Identify each cost
22 estimate separately as to whether it is for closure or postclosure care.]
23

24 1. The firm identified above is the owner or operator of the following facilities/TTUs
25 for which financial assurance for closure and/or postclosure or liability coverage is
26 demonstrated through the financial test as specified in California Code of Regulations,
27 title 22, division 4.5, chapter 14 and 15, article 8, section 66264.143, subsection (f),
28 section 66264.145, subsection (f), section 66265.143, subsection (e), and section
29 66265.145, subsection (e). The current closure and/or postclosure cost estimates
30 covered by the test are shown for each facility/TTU:
31

32 2. The firm identified above guarantees, through the guarantee as specified in
33 California Code of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, section
34 66264.143, subsection (f), section 66264.145, subsection (f), section 66265.143,
35 subsection (e), and section 66265.145, subsection (e), the closure and/or postclosure
36 care or liability coverage of the following facilities/TTUs owned or operated by the
37 guaranteed party. The current cost estimates for the closure or postclosure care so
38 guaranteed are shown for each facility/TTU:
39

40 3. In States where the U.S. Environmental Protection Agency is not administering the
41 financial requirements of subpart H of 40 CFR parts 264 and 265, this firm as owner,
42 operator or guarantor is demonstrating financial assurance for the closure or postclosure

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 care of the following facilities/TTUs through the use of a financial test equivalent or
2 substantially equivalent to the financial test specified in California Code of Regulations, title
3 22, division 4.5, chapter 14 and 15, article 8, section 66264.143, subsection (f), section
4 66264.145, subsection (f), section 66265.143, subsection (e), and section 66265.145,
5 subsection (e). The current closure and/or postclosure cost estimates covered by such a
6 test are shown for each facility/TTU:
7

8 4. The firm identified above is the owner or operator of the following facilities/TTUs for
9 which financial assurance for closure or, if a disposal facility, postclosure care, is not
10 demonstrated either to U.S. Environmental Protection Agency or a State through the
11 financial test or any other financial assurance mechanism as specified in California Code
12 of Regulations, title 22, division 4.5, chapters 14 and 15, article 8 or equivalent or
13 substantially equivalent State mechanisms. The current closure and/or postclosure cost
14 estimates not covered by such financial assurance are shown for each facility/TTU:
15

16 5. This firm is using the financial test, or its equivalent, to provide financial assurance
17 or guarantee to the following governmental agencies: [list each agency and the amount
18 assured]
19

20 56. The firm is the owner or operator or guarantor of the following Underground Injection
21 Control facilities for which financial assurance for plugging and abandonment is required
22 under 40 CFR part 144 and is assured through a financial test. The current closure cost
23 estimates as specified in 40 CFR 144.62 are shown for each facility:
24

25 This firm [insert "is required" or "is not required"] to file a Form 10K with the
26 Securities and Exchange Commission (SEC) for the latest fiscal year.

27 The fiscal year of this firm ends on [insert date]. The figures for the following items
28 marked with an asterisk are derived from this firm's independently audited, year- end
29 financial statements for the latest completed fiscal year, ended [insert date].

30 This firm is using [insert "Alternative I" or "Alternative II"] for Part A [and [if this
31 financial test includes closure and/or postclosure care, insert "Alternative I" or
32 "Alternative II"] for Part B].

33 Part A. Liability Coverage for Accidental Occurrences
34

35 [Fill in Alternative I if the criteria of paragraph (f)(1)(A) of section 66264.147 or section
36 66265.147 are used. Fill in Alternative II if the criteria of paragraph (f)(1)(B) of section
37 66264.147 or section 66265.147 are used.]
38

39 ALTERNATIVE I
40

- 41 1. Amount of annual aggregate liability coverage to be demonstrated \$ _
42 *2. Current assets \$ _____

- 1 *3. Current liabilities \$ _____
- 2 4. Net working capital [line 2 minus line 3] \$ _____
- 3 *5. Tangible net worth \$ _____
- 4 *6. If less than 90 percent of assets are located in the United States, give total United
- 5 States assets \$ _____
- 6 7. Is line 5 at least \$~~40~~20 million? [Yes/No]
- 7 8. Is line 4 at least 6 times line 1? [Yes/No]
- 8 9. Is line 5 at least 6 times line 1? [Yes/No]
- 9 10. Are at least 90 percent of assets located in the United States? If not, complete
- 10 line 11. [Yes/No]
- 11 11. Is line 6 at least 6 times line 1? [Yes/No]
- 12 12. Current corporate credit rating of this firm and name of rating service
- 13 13. Date of corporate credit rating

14

15

ALTERNATIVE II

- 16 1. Amount of annual aggregate liability coverage to be demonstrated \$ __
- 17 2. Current bond rating of most recent issuance and
- 18 name of rating service \$ _____
- 19 3. Date of issuance of bond \$ _____
- 20 4. Date of maturity of bond \$ _____
- 21 *5. Tangible net worth \$ _____
- 22 *6. Total assets in the United States [required only if less than 90 percent of assets are
- 23 located in the United States] \$ _____
- 24 7. Is line 5 at least \$20~~40~~ million? [Yes/No]
- 25 8. Is line 5 at least 6 times line 1? [Yes/No]
- 26 *9. Are at least 90 percent of assets located in the United States? [Yes/No]
- 27 10. Is line 9 at least 6 times line 1? [Yes/No]

28

29 [Fill in Part B if you are using the financial test to demonstrate assurance of both liability

30 coverage and closure or postclosure care.]

31

32

Part B. Closure or Postclosure Care and Liability Coverage

33

34 [Fill in Alternative I if the criteria of paragraphs (f)(1)(A) of 66264.143 or 66264.145

35 and/or (f)(1)(A) of 66264.147 are used or if the criteria of paragraphs (e)(1)(A) of 66265.143

36 or 66265.145 and/or (f)(1)(A) of 66265.147 are used. Fill in Alternative II if the criteria of

37 paragraphs (f)(1)(B) of 66264.143 or 66264.145 and/or (f)(1)(B) of 66264.147 are used or if

38 the criteria of paragraphs (e)(1)(B) of 66265.143 or 66265.145 and (f)(1)(B) of 66265.147

39 are used.]

40

41

ALTERNATIVE I

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

- 1
- 2 1. Sum of current closure and postclosure cost estimates (Total of all cost estimates
- 3 shown in the paragraphs of the letter to the Director of the Department of Toxic
- 4 Substances Control) \$ _____
- 5 2. Amount of annual aggregate liability coverage to be demonstrated \$ _____
- 6 3. Sum of lines 1 and 2 \$ _____
- 7 *4. Total liabilities (if any portion of your closure or postclosure cost estimate is included in
- 8 your total liabilities, you may deduct that portion from this line and add that amount to lines
- 9 5 and 6) \$ _____
- 10 *5. Tangible net worth \$ _____
- 11 *6. Net worth \$ _____
- 12 *7. Current assets \$ _____
- 13 *8. Current liabilities \$ _____
- 14 9. Net working capital (line 7 minus line 8) \$ _____
- 15 10. The sum of net income plus depreciation, depletion, and amortization \$ _____
- 16 *11. Total assets in the United States (required only if less than 90 percent of
- 17 firm's assets are located in the United States) \$ _____
- 18 12. Is line 5 at least \$20.40-million? [Yes/No]
- 19 13. Is line 5 at least 6 times line 3? [Yes/No]
- 20 14. Is line 9 at least 6 times line 3? [Yes/No]
- 21 *15. Are at least 90 percent of the firm's assets located in the United States? If not,
- 22 complete line 16 [Yes/No]
- 23 16. Is line 11 at least 6 times line 3? [Yes/No]
- 24 17. Is line 4 divided by line 6 less than 2.0? [Yes/No]
- 25 18. Is line 10 divided by line 4 greater than 0.1? [Yes/No]
- 26 19. Is line 7 divided by line 8 greater than 1.5? [Yes/No]
- 27 20. Current corporate credit rating of this firm and name of rating service
- 28 21. Date of corporate credit rating
- 29 _____

ALTERNATIVE II

- 30
- 31
- 32 1. Sum of current closure and postclosure cost estimates (Total of all cost estimates
- 33 shown in the paragraphs of the letter to the Director of the Department of Toxic
- 34 Substances Control) \$ _____
- 35 2. Amount of annual aggregate liability coverage to be demonstrated \$ _____
- 36 3. Sum of lines 1 and 2 \$ _____
- 37 4. Current bond rating of most recent issuance and name of rating service: _____
- 38 _____
- 39 5. Date of issuance of bond: _____
- 40 6. Date of maturity of bond: _____
- 41 *7. Tangible net worth (if any portion of the closure and post-closure cost estimates is

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

- 1 included in "total liabilities" on your firm's financial statements, you may add the amount of
- 2 that portion to this line.) _____
- 3 *8. Total assets in the United States (required only if less than 90 percent of firm's
- 4 assets are located in the United States) \$ _____
- 5 9. Is line 7 at least \$20 ~~40~~-million? [Yes/No]
- 6 10. Is line 7 at least 6 times line 3? [Yes/No]
- 7 *11. Are at least 90 percent of the firm's assets located in the United States? If not,
- 8 complete line 12. [Yes/No]
- 9 12. Is line 8 at least 6 times line 3? [Yes/No]

10
11 I hereby certify that the wording of this letter is identical to the wording as specified in
12 California Code of Regulations, title 22, section 66264.151, subsection (g) and is being
13 executed in accordance with the requirements of California Code of Regulations, title 22,
14 division 4.5, chapter 14 and 15, article 8.

15 [Signature]
16 [Name] [Title]
17 [Date]

18
19 (h)(1) A corporate guarantee, as specified in section 66264.143, subsection (f) or section
20 66264.145, subsection (f), or section 66265.143, subsection (e) or section 66265.145,
21 subsection (e) of this division, shall be worded as follows, except that instructions in
22 brackets are to be replaced with the relevant information and the brackets deleted:

23 ...

24 (i) A hazardous waste facility liability endorsement as required in section 66264.147 or
25 section 66265.147 shall be worded as follows, except that instructions in brackets are to
26 be replaced with the relevant information and the brackets deleted:

27

28

29

HAZARDOUS WASTE FACILITY LIABILITY ENDORSEMENT

30

31 1. This endorsement certifies that the Insurer has issued liability insurance covering
32 bodily injury and property damage to [name of insured], [address of insured] in connection
33 with the insured's obligation to demonstrate financial responsibility under California Code
34 of Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and
35 66265.147. The coverage applies at [list EPA Identification Number, name, and address
36 for each facility/transportable treatment unit (TTU)] for [insert "sudden accidental
37 occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental
38 occurrences"; if coverage is for multiple facilities and the coverage is different for different
39 facilities, indicate which facilities are insured for sudden accidental occurrences, which are
40 insured for nonsudden accidental occurrences, and which are insured for both]. The limits
41 of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate"
42 limits of the Insurer's liability], exclusive of legal defense costs. The coverage provided by

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 the above policy is [insert "primary" or "excess"]. If excess coverage, the primary coverage
2 mechanism shall also be demonstrated.

3
4 2.The insurance afforded with respect to such occurrences is subject to all of the terms
5 and conditions of the policy; provided, however, that any provisions of the policy
6 inconsistent with subsections (a) through (e) of this Paragraph 1 are hereby amended to
7 conform with subsections (a) through (e). The Insurer certifies the following with respect to
8 the insurance described above:

9 (a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its
10 obligations under the policy.

11 (b) The Insurer is liable for the payment of amounts within any deductible applicable to
12 the policy, with a right of reimbursement by the insured for any such payment made by
13 the Insurer. This provision does not apply with respect to that amount of any
14 deductible for which coverage is demonstrated as specified in California Code of
15 Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and
16 66265.147.

17 (c) Whenever requested by the Department of Toxic Substances Control (DTSC), the
18 Insurer agrees to furnish to DTSC a signed duplicate original of the policy and all
19 endorsements.

20 (d) Cancellation of the insurance, whether by the Insurer, the insured, a parent
21 corporation providing insurance coverage for its subsidiary, or by a firm having an
22 insurable interest in and obtaining liability insurance on behalf of the owner or
23 operator of the hazardous waste management facility/TTU, will be effective only upon
24 written notice and only after the expiration of 60 days after a copy of such written
25 notice is received by DTSC as evidenced by the return receipt.

26 (e) Any other termination of the insurance will be effective only upon written notice
27 and only after the expiration of thirty (30) days after a copy of such written notice is
28 received by DTSC as evidenced by the return receipt.

29
30 3. The Insurer certifies that:

31 (a) it is licensed to transact the business of insurance in California; or

32 (b) it is eligible to provide insurance as an excess or surplus lines insurer, in
33 California, and the insurance has been transacted by and through a surplus lines
34 broker currently licensed by the California Department of Insurance.

35 Attached to and forming part of policy No. [insert policy number] issued by [insert name
36 of Insurer], herein called the Insurer, of [insert address of Insurer] to [insert name of
37 insured] of [insert address of insured] this [insert day] day of [insert month] , [insert year].
38 The effective date of said policy is [insert day] day of [insert month]. California License
39 Number: [insert license number] Admitted [] Excess or Surplus Lines []

40
41 I hereby certify that the wording of this endorsement is identical to the wording specified

1 in California Code of Regulations, title 22, section 66264.151, subsection (i), is being
2 executed in accordance with the requirements of California Code of Regulations, title 22,
3 division 4.5, chapter 14 and 15, article 8, and that the Insurer is licensed to transact the
4 business of insurance in California, or eligible to provide insurance as an excess or surplus
5 lines insurer, ~~in one or more states~~ in California.

6 [Signature of Authorized Representative of Insurer]

7 [Type name]

8 [Title], Authorized Representative of [name of Insurer]

9 [Address of Representative]

10
11 (j) A certificate of liability insurance as required in section 66264.147 or section 66265.147
12 shall be worded as follows, except that the instructions in brackets are to be replaced with
13 the relevant information and the brackets deleted:

14
15 HAZARDOUS WASTE FACILITY CERTIFICATE OF LIABILITY INSURANCE

16
17 1. [Insert name of Insurer], (the "Insurer"), of [insert address of Insurer] hereby certifies
18 that it has issued liability insurance covering bodily injury and property damage to [insert
19 name of insured], (the "insured"), of [insert address of insured] in connection with the
20 insured's obligation to demonstrate financial responsibility under California Code of
21 Regulations, title 22, division 4.5, chapter 14 and 15, article 8, sections 66264.147 and
22 66265.147. The coverage applies at the facilities/transportable treatment units (TTU) [list
23 EPA Identification Number, name, and address for each facility/TTU] for [insert "sudden
24 accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden
25 accidental occurrences"; if coverage is for multiple facilities and the coverage is different for
26 different facilities, indicate which facilities are insured for sudden accidental occurrences,
27 which are insured for nonsudden accidental occurrences, and which are insured for both].
28 The limits of liability are [insert the dollar amount of the "each occurrence" and "annual
29 aggregate" limits of the Insurer's liability], exclusive of legal defense costs. The coverage is
30 provided under policy number [insert policy number], issued on [insert date]. The effective
31 date of said policy is [insert date]. The coverage provided by the above policy is [insert
32 "primary" or "excess"]. If excess coverage, the primary coverage mechanism shall also be
33 demonstrated.

34
35 2. The Insurer further certifies the following with respect to the insurance
36 described above:

37 (a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its
38 obligations under the policy.

39 (b) The Insurer is liable for the payment of amounts within any deductible applicable to
40 the policy, with a right of reimbursement by the insured for any such payment made by
41 the Insurer. This provision does not apply with respect to that amount of any
42 deductible for which coverage is demonstrated as specified in California Code of

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 Regulations, title 22, division 4.5, chapter 14 and 15, article 8, section 66264.147 and
2 66265.147.

3 (c) Whenever requested by the Department of Toxic Substances Control (DTSC), the
4 Insurer agrees to furnish to DTSC a signed duplicate of the original of the policy and all
5 endorsements.

6 (d) Cancellation of the insurance, whether by the Insurer, the insured, a parent
7 corporation providing insurance coverage for its subsidiary, or by a firm having an
8 insurable interest in and obtaining liability insurance on behalf of the owner or
9 operator of the hazardous waste management facility/TTU will be effective only
10 upon written notice and only after the expiration of 60 days after a copy of such
11 written notice is received by DTSC as evidenced by the return receipt.

12 (e) Any other termination of the insurance will be effective only upon written notice
13 and only after the expiration of thirty (30) days after a copy of such written notice is
14 received by the DTSC as evidenced by the return receipt.

15

16 3. The Insurer certifies that:

17 (a) it is licensed to transact the business of insurance in California; or

18 (b) it is eligible to provide insurance as an excess or surplus lines insurer, in
19 California, and the insurance has been transacted by and through a surplus lines
20 broker currently licensed by the California Department of Insurance.

21

22 I hereby certify that the wording of this instrument is identical to the wording specified in
23 California Code of Regulations, title 22, section 66264.151, subsection (j), is being
24 executed in accordance with California Code of Regulations, title 22, division 4.5, chapter
25 14 and 15, article 8, and that the Insurer is licensed to transact the business of insurance in
26 California, or eligible to provide insurance as an excess or surplus lines insurer, ~~in one or~~
27 ~~more states~~ the California. California License Number: [insert license number]

28 Admitted [] Excess or Surplus Lines []

29

30 [Signature of authorized representative of Insurer]

31 [Type name]

32 [Title],

33 Authorized Representative of [name of Insurer]

34 [Address of Representative]

35 ...

36

37 *Note: Authority cited: Sections 25150, 25159, 25159.5, 25200.21, and 25245, 58004, and*
38 *58012, Health and Safety Code. Reference: Section 25245, Health and Safety Code; and*
39 *40 CFR Section 264.151.*

40

41

DIVISION 4.5, TITLE 22, CALIFORNIA CODE OF REGULATIONS

CHAPTER 15. Interim Status Standards for Owners and Operators of Hazardous Waste Transfer, Treatment, Storage, and Disposal Facilities

Amend sections 66265.16 and 66265.101, 66265.141, 66265.143, 66265.144, 66265.145, 66265.146, and 66265.147 of Title 22 of the California Code of Regulations, to read:

§ 66265.16. Personnel Training.

(a)(1) Facility personnel shall successfully complete a training program through ~~of-classroom or online~~ instruction, or on-the-job training that teaches personnel ~~them~~ to perform their duties in a way that ensures the facility's compliance with the requirements of this ~~chapter~~ division and subsection 5192(p) of Title 8, California Code of Regulations. Facility personnel engaged in shipping hazardous waste shall be triennially trained to meet the requirements in section 172.704 of Title 49, Code of Federal Regulations commensurate with their responsibilities.

(1) The owner or operator shall ensure that ~~this~~ the training program includes all the elements specified in this section. ~~described in the document required under subsection (d)(3) of this section.~~

(2) ~~This program~~ Hazardous waste management training must ~~shall~~ be directed by a person trained in hazardous waste management procedures, and must ~~shall~~ include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation and the identification and segregation of incompatible hazardous wastes or products) relevant to the positions in which they are employed.

(3) At a minimum, the emergency response training program shall ~~must~~ be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency prevention, mitigation, abatement, and notification procedures, emergency equipment, and emergency systems, including all the following, where applicable:

- (A) procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;
- (B) key parameters for automatic waste feed cut-off systems;
- (C) communications or alarm systems;
- (D) response to fires or explosions;
- (E) response to groundwater contamination incidents; ~~and~~
- (F) shutdown of operations;
- (G) self-protection measures; and
- (H) accident prevention methods.

(4) The training program must also be designed to ensure the following:

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 (A) General awareness. All facility personnel shall be provided training that
2 provides an overview of the facility description and operations that are subject to
3 this chapter, including, but not limited to, security and safety considerations; and
4 (B) Function specific job training. All facility personnel who are involved with
5 hazardous waste management activities shall be provided training concerning
6 the requirements of this chapter and any relevant standard operating procedures
7 applicable to job tasks and functions performed by the employee.

8 (b) Facility personnel shall successfully complete the program required in subsection (a) of
9 this section within 180 days ~~six months~~ after the date of their employment or assignment to
10 a facility, or to a new position at a facility. Employees hired after the effective date of these
11 regulations shall not work in unsupervised positions until they have completed the training
12 requirements of subsection (a) of this section.

13 (c) Facility personnel shall take part in an annual review of the initial training required in
14 subsection (a) of this section.

15 (d) The training records required by this subsection must demonstrate compliance with
16 subsection (a) and include the specific elements set out in paragraphs (1) through (4). The
17 owner or operator shall maintain the following documents and records at the facility:

- 18 (1) the job title for each position at the facility related to hazardous waste management,
19 and the name of the employee filling each job;
20 (2) a written job description for each position listed under ~~paragraph subsection-~~(d)(1) of
21 this section. This description may be consistent in its degree of specificity with
22 descriptions for other similar positions in the same company location or bargaining unit,
23 but shall include the requisite skill, education, or other qualifications, and duties of
24 employees assigned to each position;
25 (3) a written description, including a syllabus and/or outline, of the type and amount of
26 both introductory and continuing training that will be given to each person filling a
27 position listed under paragraph (d)(1) of this section;
28 (4) employee signed or certified records that document that the training ~~or job~~
29 ~~experience~~ required under subsections (a), (b), and (c) of this section has been given
30 to, and completed by, each employee.

31 (e) Training records on current personnel shall be kept until closure of the facility; training
32 records on former employees shall be kept for at least three years from the date the
33 employee last worked at the facility. Personnel training records may accompany personnel
34 transferred within the same company.

35 (f) The owner or operator shall prepare and submit to the Department by March 1 of each
36 year, an annual certification that attests to the training of the facility personnel in accordance
37 with subsection (a). The certification must include the following:

- 38 (1) a signed statement certifying that facility personnel have been trained in a manner
39 that satisfies the requirements of section 66265.16 and any applicable requirements of
40 subsection 5192(p) of Title 8, California Code of Regulations and section 172.704 of
41 Title 49, Code of Federal Regulations.

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 (2) the job title for each position at the facility related to hazardous waste management,
2 and the name of the employee filling each job.

3
4 *Note: Authority cited: Sections ~~208~~, 25150, ~~and~~ 25159, 25200.21, 58004, and 58012, Health
5 and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR
6 Section 265.16.*

7
8 ...

9
10 **§ 66265.143. Financial Assurance for Closure.**

11 ...

12 (a) Closure trust fund.

13 ...

14 (b) Surety bond guaranteeing payment into a closure trust fund.

15 ...

16 (c) Closure letter of credit.

17 ...

18 (d) Closure insurance.

19 (1) An owner or operator may satisfy the requirements of this section by obtaining
20 closure insurance which conforms to the requirements of this section and submitting a
21 certificate of such insurance to the Department. The owner or operator shall submit to
22 the Department a letter from an insurer stating that the insurer is considering issuance
23 of closure insurance conforming to the requirements of this subsection to the owner or
24 operator. The owner or operator shall submit the certificate of insurance to the
25 Department or establish other financial assurance as specified in this section. At a
26 minimum, the insurer shall be:

27 (A) licensed to transact the business of insurance in California; or

28 (B) eligible to provide insurance as an excess or surplus lines insurer, in one or
29 more states California. This insurance shall be transacted by and through a
30 surplus lines broker currently licensed by the California Department of Insurance.

31 ...

32 (e) Financial test and guarantee for closure.

33 (1) An owner or operator may satisfy the requirements of this section by
34 demonstrating that he or she passes a financial test as specified in this subsection.

35 To pass this test the owner or operator shall meet the criteria of either subsection

36 (e)(1)(A) or (B) and comply with the requirements of subsection (e)(10) of this section:

37 (A) the owner or operator shall have all the following:

38 1. two of the following three ratios: a ratio of total liabilities to net worth
39 less than 2.0; a ratio of the sum of net income plus depreciation, depletion
40 and amortization to total liabilities greater than 0.1; and a ratio of current
41 assets to current liabilities greater than 1.5; and

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 2. a current corporate credit rating of AAA, AA, A or BBB as issued by
2 Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
3 23. net working capital and tangible net worth each at least six times the
4 sum of the current closure and postclosure cost estimates and the current
5 plugging and abandonment cost estimates; and
6 34. tangible net worth of at least \$10-20 million; and
7 45. assets located in the United States amounting to at least 90 percent of
8 total assets or at least six times the sum of the current closure and
9 postclosure cost estimates for all of the owner's or operator's hazardous
10 waste facilities regulated by the Department and the current plugging and
11 abandonment cost estimates.

12 (B) The owner or operator shall have all the following:

- 13 1. a current rating for his or her most recent bond issuance of AAA, AA, A
14 or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued
15 by Moody's; and
16 2. tangible net worth at least six times the sum of the current closure and
17 postclosure cost estimates and the current plugging and abandonment
18 cost estimates; and
19 3. tangible net worth of at least \$10-20 million; and
20 4. assets located in the United States amounting to at least 90 percent of
21 total assets or at least six times the sum of the current closure and
22 postclosure cost estimates for all of the owner's or operator's hazardous
23 waste facilities regulated by the Department and the current plugging and
24 abandonment cost estimates.

25 (2) The phrase "current closure and postclosure cost estimates" as used in subsection
26 (e)(1) of this section refers to the cost estimates required to be shown in paragraphs 1-
27 through 4 through 6 of the letter from the owner's or operator's chief financial officer as
28 specified in section 66264.151 subsection (f). The phrase "current plugging and
29 abandonment cost estimates" as used in subsection (e)(1) of this section refers to the
30 cost estimates required to be shown in paragraphs 1-through 4 through 6 of the letter
31 from the owner's or operator's chief financial officer.

32 (3) To demonstrate that this test has been met, the owner or operator shall submit the
33 following items to the Department:

- 34 (A) a letter signed by the owner's or operator's chief financial officer. The letter
35 shall be on the owner's or operator's official letterhead stationery, shall contain
36 an original signature and shall be worded as specified in section 66264.151,
37 subsection (f); and
38 (B) a copy of the owner's or operator's financial statements and the independent
39 certified public accountant's report on examination of the owner's or operator's
40 financial statements for the latest completed fiscal year; and
41 (C) a special report from the owner's or operator's independent certified public
42 accountant to the owner or operator stating that includes the following:

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 1. A statement that the independent certified public accountant has
2 compared the data which the letter from the chief financial officer specifies
3 as having been derived from the independently audited, year-end financial
4 statements for the latest fiscal year with the amounts in such financial
5 statements; and
6 ~~2. in connection with that procedure, no matters came to the independent~~
7 ~~certified public accountant's attention which caused that accountant to~~
8 ~~believe that the specified data should be adjusted.~~ identification and
9 description of the specific accounting standards and guidance relied upon
10 to prepare the report.

11 ...
12 (10) The owner or operator shall establish a trust fund that conforms to the
13 requirements specified in subsection (a) of this section, within 180 days of the
14 effective date of this section or the date of the next submittal required by subsection
15 (e)(5) of this section, whichever is later. The value of the trust fund shall be equal to
16 20 percent of the current closure cost estimate as specified in section 66265.142.
17 Payments may be made over a period of ten (10) years beginning with establishment
18 of the fund. The payments into the trust fund shall comply with the following schedule:

19 (A) An initial payment shall be made upon establishment of the trust fund in an
20 amount equal to two percent of the current closure cost as specified in section
21 66265.142.

22 (B) Subsequent annual payments shall be equivalent to two percent of the
23 current closure cost estimate as specified in section 66265.142 until the value
24 of the trust fund is equal to 20 percent of the closure cost estimate.

25 (C) Once the current value of the trust fund is equal to 20 percent of the closure
26 cost estimate as specified in section 66265.142, the owner or operator shall
27 maintain the trust fund at a minimum value of 20 percent of the current closure
28 cost estimate.

29 (11) An owner or operator may not rely on any assets to meet the requirements of this
30 section if those same assets serve as the basis of satisfying any financial assurance or
31 financial guarantee requirement imposed by any other "governmental agency," as
32 defined in California Civil Code section 1633.2(i).

33 (f) Use of multiple financial mechanisms.

34 ...

35 (g) Use of a financial mechanism for multiple facilities.

36 ...

37 (h) Alternative Financial Mechanism for Closure Costs.

38 ...

39 (i) Release of the owner or operator from the requirements of this section.

40 ...

41

1 *Note: Authority cited: Sections 25150, 25159, 25159.5, ~~25200.21, and 25245~~, 58004, and*
2 *58012, Health and Safety Code. Reference: Sections 25200.21 and 25245, Health and Safety*
3 *Code; 40 CFR Section 265.143.*

4
5 **§ 66265.144. Cost Estimate for Postclosure Care.**

6 (a) The owner or operator of a hazardous waste disposal unit shall prepare and submit to
7 the Department a detailed written estimate, in current dollars, of the annual cost of
8 postclosure monitoring and maintenance of the facility in accordance with the applicable
9 postclosure regulations in sections 66265.117 through 66265.120, 66265.228,
10 66265.258, 66265.280 and 66265.310.

11 (1) The postclosure cost estimate must be based on the costs to the owner or
12 operator of hiring a third party to conduct postclosure care activities. A third party is a
13 party who is neither a parent nor subsidiary of the owner or operator. (See definition
14 of "parent corporation" in section 66260.10).

15 (2) The postclosure cost estimate is calculated by multiplying the annual postclosure
16 cost estimate by ~~the number of 30 years or as of postclosure care required under~~
17 section 66265.117. The Department may reset this period to 30 years each time the
18 postclosure permit is issued or renewed. This period will be determined consistent
19 with determinations made in section 66265.117.

20 (b) During the active life of the facility, the owner or operator shall adjust the postclosure
21 cost estimate for inflation within 60 days prior to the anniversary date of the establishment
22 of the financial instrument(s) used to comply with section 66265.145. For owners or
23 operators using the financial test or corporate guarantee, the postclosure care cost
24 estimate shall be updated for inflation no later than 30 days after the close of the firm's
25 fiscal year and before submission of updated information to the Department as specified in
26 section 66265.145(d)(5). The adjustment shall be made by recalculating the postclosure
27 cost estimate in current dollars or by using an inflation factor derived from the most recent
28 Implicit Price Deflator for Gross National Product published by the U.S. Department of
29 Commerce in its Survey of Current Business as specified in ~~subsections (b)(1) and (b)(2) of~~
30 this section paragraphs (1) and (2) of this subsection. The inflation factor is the result of
31 dividing the latest published annual Deflator by the Deflator for the previous year.

32 (c) During the active life of the facility, the owner or operator shall revise the postclosure
33 cost estimate within 30 days after the Department has approved the request to modify the
34 postclosure plan, if the change in the postclosure plan increases the cost of postclosure
35 care. The revised postclosure cost estimate shall be adjusted for inflation as specified in
36 subsection (b) section 66264.144(b).

37 (d) The owner or operator shall keep the following at the facility during the operating life of
38 the facility: the latest postclosure cost estimate prepared in accordance with ~~section~~
39 66264.144(a) and (c) subsections (a) and (c) and, when this estimate has been adjusted in
40 accordance with subsection (b) section 66264.144(b), the latest adjusted postclosure cost
41 estimate.

1 NOTE: Authority cited: Sections ~~208~~, 25150, 25159, 25159.5, 25200.21, ~~and 25245~~, 58004,
2 and 58012, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40
3 CFR Section 265.144.

4

5 **§ 66265.145. Financial Assurance for Postclosure Care.**

6 An owner or operator of a facility with a hazardous waste disposal unit shall establish and
7 demonstrate to the Department financial assurance for postclosure care of the disposal
8 unit(s). The owner or operator shall choose from the options as specified in subsections (a)
9 through (e) and (h) of this section.

10

...

11

(d) Postclosure insurance.

12

(1) An owner or operator may satisfy the requirements of this section by obtaining
13 postclosure insurance ~~which that~~ conforms to the requirements of this subsection and
14 submitting a certificate of such insurance to the Department. The owner or operator
15 shall submit to the Department a letter from an insurer stating that the insurer is
16 considering issuance of postclosure insurance conforming to the requirements of this
17 section to the owner or operator. The owner or operator shall submit the certificate of
18 insurance to the Department or establish other financial assurance as specified in this
19 section. At a minimum, the insurer shall be:

20

(A) licensed to transact the business of insurance in California, or

21

(B) eligible to provide insurance as an excess or surplus lines insurer, in

22

California one or more states. If coverage is obtained from an excess or surplus

23

lines insurer, the insurance shall be transacted by and through a surplus lines

24

broker currently licensed by the California Department of Insurance.

25

...

26

(e) Financial test and guarantee for postclosure care.

27

(1) An owner or operator may satisfy the requirements of this section by
28 demonstrating that he or she passes a financial test as specified in this section. To
29 pass this test the owner or operator shall meet the criteria either of subsection
30 (e)(1)(A) or (B) and comply with the requirements of subsection (e)(11) of this section.

31

(A) the owner or operator shall have all the following:

32

1. two of the following three ratios: a ratio of total liabilities to net worth
33 less than 2.0; a ratio of the sum of net income plus depreciation,
34 depletion and amortization to total liabilities greater than 0.1; and a ratio
35 of current assets to current liabilities greater than 1.5; ~~and~~

36

2. a current corporate credit rating of AAA, AA, A or BBB as issued by
37 Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's;

38

3. net working capital and tangible net worth each at least six times

39

the sum of the current closure and postclosure cost estimates and the
40 current plugging and abandonment cost estimates; ~~and~~

41

34. tangible net worth of at least \$~~10~~20 million; and

42

45. assets in the United States amounting to at least 90 percent of total

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 assets or at least six times the sum of the current closure and
2 postclosure cost estimates for all of the owner's or operator's hazardous
3 waste facilities regulated by the Department and the current plugging and
4 abandonment cost estimates.

5 (B) the owner or operator shall have all the following:

- 6 1. a current rating for his or her most recent bond issuance of AAA, AA,
7 A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as
8 issued by Moody's; ~~and~~
- 9 2. tangible net worth at least six times the sum of the current closure and
10 postclosure cost estimates and the current plugging and abandonment
11 cost estimates; ~~and~~
- 12 3. tangible net worth of at least \$~~10~~20 million; and
- 13 4. assets located in the United States amounting to at least 90 percent of
14 total assets or at least six times the sum of the current closure and
15 postclosure cost estimates for all of the owner's or operator's hazardous
16 waste facilities regulated by the Department and the current plugging
17 and abandonment cost estimates.

18 (2) The phrase "current closure and postclosure cost estimates" as used in subsection
19 (e)(1) of this section refers to the cost estimates required to be shown in paragraphs 1
20 ~~through 4~~ through 6 of the letter from the owner's or operator's chief financial officer
21 as specified in section 66264.151 subsection (f). The phrase "current plugging and
22 abandonment cost estimates" as used in subsection (e)(1) of this section refers to the
23 cost estimates required to be shown in paragraphs 1 ~~through 4~~ through 6 of the letter
24 from the owner's or operator's chief financial officer.

25 (3) To demonstrate that this test can be met, the owner or operator shall submit the
26 following items to the Department:

- 27 (A) a letter signed by the owner's or operator's chief financial officer and worded
28 as specified in section 66264.151, subsection (f). The letter shall be on the
29 owner's or operator's official letterhead stationery, and shall contain an original
30 signature, ~~and~~
- 31 (B) a copy of the owner's or operator's financial statements and the independent
32 certified public accountant's report on examination of the owner's or operator's
33 financial statements for the latest completed fiscal year; and
- 34 (C) a special report from the owner's or operator's independent certified public
35 accountant to the owner or operator ~~stating that~~ includes the following:
 - 36 1. a statement that the independent certified public accountant has
37 compared the data which the letter from the chief financial officer specifies
38 as having been derived from the independently audited, year-end financial
39 statements for the latest fiscal year with the amounts in such financial
40 statements; and
 - 41 2. ~~in connection with that procedure, no matters came to the independent~~
42 ~~certified public accountant's attention which caused that accountant to~~

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 ~~believe that the specified data should be adjusted.~~ identification and
2 description of the specific accounting standards and guidance relied upon
3 to prepare the report.

4 ...
5 (11) The owner or operator shall establish a trust fund that conforms to the
6 requirements specified in subsection (a) of this section, within 180 days of the effective
7 date of this section or the date of the next submittal required by subsection (e)(5) of
8 this section, whichever is later. The value of the trust fund shall be equal to 20 percent
9 of the current postclosure cost estimate as specified in section 66265.144.

10 Payments may be made over a period of ten (10) years beginning with establishment
11 of the fund. The payments into the trust fund shall comply with the following schedule:

12 (A) An initial payment shall be made upon establishment of the trust fund in an
13 amount equal to two percent of the current postclosure cost as specified in
14 section 66265.144.

15 (B) Subsequent annual payments shall be equivalent to two percent of the
16 current postclosure cost estimate as specified in section 66265.144 until the
17 value of the trust fund is equal to 20 percent of the postclosure cost estimate.

18 (C) Once the current value of the trust fund is equal to 20 percent of the
19 postclosure cost estimate as specified in section 66265.144, the owner or
20 operator shall maintain the trust fund at a minimum value of 20 percent of the
21 current postclosure cost estimate.

22 (12) An owner or operator may not rely on any assets to meet the requirements of this
23 section if those same assets serve as the basis of satisfying any financial assurance or
24 financial guarantee requirement imposed by any other "governmental agency," as
25 defined in California Civil Code section 1633.2(i).

26 ...
27 (f) Use of multiple financial mechanisms.

28 ...
29 (g) Use of a financial mechanism for multiple facilities for postclosure care.

30 ...
31 (h) Alternative Financial Mechanism for Postclosure Care.

32 ...
33 (i) Release of the owner or operator from Financial Assurance requirements for postclosure
34 care.

35 ...
36 *Note: Authority cited: Sections 25150, 25159, 25159.5, 25200.21, ~~and~~ 25245, 58004, and*
37 *58012, Health and Safety Code. Reference: Section 25245, Health and Safety Code; 40*
38 *CFR Section 265.145.*

39
40 **§ 66265.146. Use of a Mechanism for Financial Assurance of Both Closure and Post-**
41 **Closure Care.**

42 An owner or operator may satisfy the requirements for financial assurance for both closure
43 and post-closure care for one or more facilities by using a trust fund, surety bond, letter of

1 credit, insurance, financial test, or corporate guarantee or alternative mechanism, that meets
2 the specifications for the mechanism in both sections 66265.143 and 66265.145 for each
3 facility. The amount of funds available through the mechanism shall be no less than the sum
4 of funds that would be available if a separate mechanism had been established and
5 maintained for financial assurance of closure and of post-closure care.
6

7 *Note: Authority cited: Sections 208, 25150, 25159, 25159.5, 25200.21, and 25245, 58004, and*
8 *58012, Health and Safety Code. Reference: Sections 25200.21 and 25425, Health and Safety*
9 *Code; 40 CFR Section 265.146*
10

11 **§ 66265.147. Liability Requirements.**

12 (a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous
13 waste transfer, treatment, storage or disposal facility or a group of such facilities, shall
14 demonstrate to the Department financial responsibility for bodily injury and property damage
15 to third parties caused by sudden accidental occurrences arising from operations of the
16 facility or group of facilities. Except as specified in Section 67450.16, the owner or operator
17 shall have and maintain liability coverage for sudden accidental occurrences in the amount
18 of at least \$1 million per occurrence with an annual aggregate of at least \$2 million,
19 exclusive of legal defense costs. This liability coverage may be demonstrated, as specified
20 in subsections (a)(1), (2), (3), (4), (5), (6) or (8) of this section, and for an operator which is a
21 public agency proposing to operate a household hazardous waste collection facility,
22 subsection (7).

23 (1) An owner or operator may demonstrate the required liability coverage by having
24 liability insurance as specified in this subsection.

25 (A) At a minimum, the insurer shall be:

- 26 1. licensed to transact the business of insurance in California, or
27 2. eligible to provide insurance as an excess or surplus lines insurer, in
28 the California one or more states. This insurance shall be transacted by
29 and through a surplus lines broker currently licensed by the California
30 Department of Insurance.
31

31 ...

32 (b) Coverage for nonsudden ~~non-sudden~~ accidental occurrences. An owner or operator of
33 a surface impoundment as defined in section 66260.10, landfill as defined in section
34 66260.10, or land treatment facility as defined in section 66260.10 which is used to
35 manage hazardous waste, or a group of such facilities, shall demonstrate to the
36 Department financial responsibility for bodily injury and property damage to third parties
37 caused by nonsudden ~~non-sudden~~ accidental occurrences arising from operations of the
38 facility or group of facilities. The owner or operator shall have and maintain liability
39 coverage for nonsudden ~~non-sudden~~ accidental occurrences in the amount of at least \$3
40 million per occurrence, as defined in section 66260.10 with an annual aggregate of at least
41 \$6 million, exclusive of legal defense costs. An owner or operator who must meet the
42 requirements of this section may combine the required per-occurrence coverage levels for

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 sudden and nonsudden ~~non-sudden~~ accidental occurrences into a single per-occurrence
2 level, and combine the required annual aggregate coverage levels for sudden and
3 nonsudden accidental occurrences into a single annual aggregate level. Owners or
4 operators who combine coverage levels for sudden and nonsudden ~~non-sudden~~ accidental
5 occurrences shall maintain liability coverage in the amount of at least \$4 million per
6 occurrence and \$8 million annual aggregate. This liability coverage may be demonstrated
7 as specified in subsections (b)(1) through (7) of this section.

8 (1) An owner or operator may demonstrate the required liability coverage by
9 having liability insurance as specified in this subsection.

10 (A) At a minimum, the insurer shall be:

- 11 1. licensed to transact the business of insurance in California, or
12 2. eligible to provide insurance as an excess or surplus lines insurer, in
13 California one or more states. This insurance shall be transacted by and
14 through a surplus lines broker currently licensed by the California
15 Department of Insurance.

16 ...

17 (c) Request for variance.

18 ...

19 (d) Adjustments by the Department.

20 ...

21 (e) Period of coverage.

22 ...

23 (f) Financial test for liability coverage.

24 (1) An owner or operator may satisfy the requirements of this section by demonstrating
25 that he or she passes a financial test as specified in this subsection. To pass this test
26 the owner or operator shall meet the criteria of subsection (f)(1)(A) or (B) of this section.

27 (A) the owner or operator shall have all the following:

- 28 1. net working capital and tangible net worth each at least six times the
29 amount of liability coverage to be demonstrated by this test; ~~and~~
30 2. a current corporate credit rating of AAA, AA, A or BBB as issued by
31 Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's;
32 ~~23.~~ tangible net worth of at least \$1020 million; and
33 ~~34.~~ assets in the United States amounting to either:
34 a. at least 90 percent of total assets; or
35 b. at least six times the amount of liability coverage to be
36 demonstrated by this test.

37 (B) the owner or operator shall have all the following:

- 38 1. a current rating for his or her most recent bond issuance of AAA, AA, A
39 or BBB as issued by Standard and Poor's, or Aaa, Aa, A or Baa as issued
40 by Moody's; ~~and~~
41 2. tangible net worth of at least \$1020 million; ~~and~~
42 3. tangible net worth at least six times the amount of liability

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

- 1 coverage to be demonstrated by this test; and
2 4. assets in the United States amounting to either:
3 a. at least 90 percent of total assets; or
4 b. at least six times the amount of liability coverage to be
5 demonstrated by this test.

6 (2) The phrase "amount of liability coverage" as used in subsection (f)(1) of this
7 section refers to the annual aggregate amounts for which coverage is required under
8 subsections (a) and (b) of this section and sections 67450.14 and 67450.15.

9 (3) To demonstrate that this test can be met, the owner or operator shall submit the
10 following items to the Department:

11 (A) a letter signed by the owner's or operator's chief financial officer and worded
12 as specified in section 66264.151, subsection (g). The letter shall be on the
13 official letterhead stationery of the owner or operator, and shall contain an
14 original signature. An owner or operator may use the financial test to
15 demonstrate both assurance for closure or postclosure care, as specified in
16 section 66264.143, subsection (f), section 66264.145, subsection (f), section
17 66265.143, subsection (e), section 66265.145, subsection (e) and section
18 67450.13, and liability coverage as specified in section 66264.147, subsection
19 (a), section 66264.147, subsection (b), section 66265.147, subsection (a),
20 section 66265.147, subsection (b), sections 67450.14 and 67450.15. If an owner
21 or operator is using the financial test to cover both forms of financial
22 responsibility, a separate letter is not required.

23 (B) a copy of the owner's or operator's financial statements and the independent
24 certified public accountant's report on examination of the owner's or operator's
25 financial statements for the latest completed fiscal year.

26 (C) a special report from the owner's or operator's independent certified public
27 accountant to the owner or operator stating that includes the following:

- 28 1. a statement that the independent certified public accountant has
29 compared the data which the letter from the chief financial officer specifies
30 as having been derived from the independently audited, year-end financial
31 statements for the latest fiscal year with the amounts in such financial
32 statements; and
33 ~~2. in connection with that procedure, no matters came to the independent~~
34 ~~certified public accountant's attention which caused that accountant to~~
35 ~~believe that the specified data should be adjusted.~~ identification and
36 description of the specific accounting standards and guidance relied upon
37 to prepare the report.

38 ...

39 *Note: Authority cited: Sections 25150, 25159, 25159.5, 25200.21, 25245, 58004 and 58012,*
40 *Health and Safety Code. Reference: Sections 25200.1 and 25245, Health and Safety Code;*
41 *40 CFR Section 265.147.*

1 **CHAPTER 20. The Hazardous Waste Permit Program**

2
3 **Add** sections 66270.14(b)(22), 66270.14(b)(23), 66270.14(b)(24), and 66270.14(e) of Title 22
4 of the California Code of Regulations, to read:

5
6 **Amend** sections 66270.14(c)(8) and B.5 of Appendix I of Title 22 of the California Code of
7 Regulations, to read:

8
9 **§ 66270.14(b) Contents of the Part B: General Requirements**

10 ...
11 (22) When applicable, the most recent corrective action cost estimate for the facility
12 prepared in accordance sections 66264.100, 66264.101 and 66264.708, and a copy of
13 the documentation required to demonstrate financial assurance for monitoring and
14 completing such corrective action. For a new facility, a copy of the required
15 documentation may be submitted sixty (60) days prior to the initial receipt of hazardous
16 waste, if that is later than the submission of the Part B.

17
18 (23) Relevant standard operating procedures, or other documents serving a similar
19 purpose, if any, that a facility has developed and maintained for the purpose of
20 describing facility procedures for hazardous waste operation and maintenance. The
21 applicant may submit these documents in an electronic format or on paper.

22
23 (24) Community Involvement Profile.
24 A community involvement profile (Profile) that includes readily available information for
25 the surrounding community. The surrounding community for purposes of the information
26 included in the Profile must include all United States census tracts that border the
27 facility. The Profile must include all the following:

28 (A) Project Description. The description of the proposed hazardous waste facility
29 must include all the following:
30 1. all hazardous waste activities to be conducted at the facility;
31 2. the hazardous waste facility site address and county assessor's parcel
32 number; and
33 3. the surrounding land uses and zoning designations within a one mile
34 radius of the facility boundaries.

35 (B) Surrounding Community Demographics. The applicant shall provide a
36 preliminary identification and summary of the following relevant demographic
37 characteristics as defined by the United States Census Bureau regarding the
38 surrounding community for the most current year. These factors must include the
39 following:
40 1. age structure;
41 2. educational attainment;
42 3. household income;

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

- 1 4. languages spoken in the home;
- 2 5. linguistic isolation or ability to speak English;
- 3 6. population size, and population projections, if available;
- 4 7. race and ethnicity data; and
- 5 8. unemployment rate.
- 6 (C) Surrounding Community Issues. The applicant shall identify known health or
- 7 environmental concerns relevant to the facility's operation, hazardous waste
- 8 activities, or facility modifications that have been asserted by the public or
- 9 government agencies since the last hazardous waste facility permit issuance
- 10 date.
- 11 (D) Surrounding Community Interest. The applicant shall summarize or describe
- 12 any known public activities regarding the hazardous waste facility within the last
- 13 five (5) years. This may include any community or public meetings or hearings.
- 14 (E) Sensitive Receptors. The applicant shall identify sensitive receptors in the
- 15 surrounding community. These include: all schools, child care facilities, hospitals,
- 16 elderly housing, elder care facilities or convalescent facilities.
- 17 (F) Location of Tribal Lands. The applicant shall identify tribal lands in the
- 18 surrounding community that are owned either by an individual Indian or a tribe,
- 19 the title to which is held in trust by the federal government or a Native American
- 20 tribe located in California that is on the contact list maintained by the Native
- 21 American Heritage Commission for the purposes of Chapter 905 of the Statutes
- 22 of 2004.
- 23 (G) Potential Offsite Sources. The applicant shall identify and provide the
- 24 locations of any offsite handlers of hazardous materials or hazardous waste, and
- 25 sites within the surrounding community. The offsite sources must include the
- 26 identification of the following:
- 27 1. other hazardous waste facilities;
- 28 2. large quantity generators of hazardous waste;
- 29 3. sites identified by the Department pursuant to Health and Safety Code
- 30 section 65962.5 (Cortese List);
- 31 4. entities or industrial facilities required to report under the Toxics
- 32 Release Inventory Program pursuant to Emergency Planning and
- 33 Community Right-to-Know Act, section 313. (42 U.S.C. §11023 and 40
- 34 CFR Part 372);
- 35 5. entities or industrial facilities handling or storing any hazardous
- 36 materials that are required to report under section 312 of the Emergency
- 37 Planning and Community Right-to-Know Act. (42 U.S.C. §11022 and 40
- 38 CFR Part 355); and
- 39 6. transportation corridors in relation to the facility.
- 40

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 Note: Authority cited: Sections 25150, 25159, 25159.5, 25179.6, 25200.21, 25245, 58004, and
2 58012, Health and Safety Code. Reference: Sections 25150, 25159, 25159.5, 25179.6, 25200
3 and 58012, Health and Safety Code; and 40 CFR Section 270.14.

4 ...

5 **§ 66270.14(c)**

6 ...

7 (8) If a corrective action program is required under sections 66264.91 and/or 66264.701
8 at the time of permit application, the owner or operator shall submit sufficient
9 information, supporting data, and analyses to establish a corrective action program
10 which meets the requirements of sections 66264.100 and/or 66264.7087098. To
11 demonstrate compliance with sections 66264.100 and/or 66264.7087098, the owner or
12 operator shall address, at a minimum, the following items:

13 ...

14 **§ 66270.14(e) Hazardous Waste Facility Permit Health Risk Assessment.**

15 Applicants shall prepare and submit a hazardous waste facility permit health risk
16 assessment, subject to the approval of the Department, as follows:

17 (1) The Hazardous Waste Facility Permit Health Risk Assessment must in its entirety
18 identify the following:

19 (A) Known releases of hazardous waste or chemicals of potential concern at the
20 facility that have resulted in contaminated media;

21 (B) Reasonably foreseeable potential releases of hazardous waste or chemicals
22 of potential concern at the facility from normal operations, upset conditions, or
23 both, including, but not limited to, releases associated with transportation to or
24 from the facility;

25 (C) Potential pathways of human exposure to hazardous wastes or chemicals of
26 potential concern resulting from the releases specified in either subparagraphs
27 (1)(A) or (1)(B) or both of this subsection; and

28 (D) Potential magnitude and potential health impact of the human exposure to
29 persons both within and outside of the facility resulting from releases specified in
30 either subparagraphs (1)(A) or (1)(B) or both of this subsection.

31 (2) The Hazardous Waste Facility Permit Health Risk Assessment process may include
32 up to three steps:

33 (A) A hazardous waste facility permit health risk assessment questionnaire
34 ("HRA Questionnaire") completed in accordance with paragraph (e)(4);

35 (B) A Screening Level Health Risk Assessment for a hazardous waste facility
36 permit ("Screening Level HRA") completed in accordance with paragraphs
37 (e)(10) through (e)(15);

38 (C) A Baseline Health Risk Assessment for a hazardous waste facility permit
39 ("Baseline HRA") completed in accordance with paragraphs (e)(16) through
40 (e)(21);

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 (3) An applicant for hazardous waste facility permit shall submit to the Department an
2 HRA Questionnaire that complies with paragraphs (e)(4) through (e)(7) requirements
3 concurrently with the Part B permit application.

4 (A) An applicant shall also submit a Baseline HRA work plan in accordance with
5 paragraphs (e)(1) and (e)(16) requirements, concurrently with the Part B permit
6 application for a hazardous waste permit if applying for any of the following types
7 of hazardous waste permits:

8 1. Class 1 Landfill;

9 2. large hazardous waste treatment facility with an operating permit
10 pursuant to Title V of the federal Clean Air Act (42 U.S.C. §1857 et seq.)
11 or the California Clean Air Act of 1988 (Health & Saf. Code, §39000 et
12 seq.) or their implementing regulations and rules;

13 3. Hazardous waste incinerator; or

14 4. Boiler or industrial furnace burning hazardous waste.

15 (4) Hazardous Waste Facility Permit Health Risk Assessment Questionnaire. An
16 applicant for a hazardous waste permit shall submit an HRA Questionnaire that meets
17 the following:

18 (A) The applicant shall provide available information that can be reasonably
19 ascertained by the owner or operator to assess the potential for the public to be
20 exposed to hazardous wastes or hazardous constituents from sources related to
21 the facility.

22 (B) The HRA Questionnaire shall include all the following:

23 1. a facility description in accordance with paragraph (e)(5);

24 2. completion of a health risk assessment assumptions checklist in
25 accordance with paragraph (e)(6); and

26 3. a conceptual site model of exposures or potential exposures that
27 organizes the existing data and documents known site conditions in
28 accordance with paragraph (e)(7).

29 (5) Facility Description. A description of hazardous waste facility operations must
30 include all the following:

31 (A) Name of the facility and contact information;

32 (B) Description of the facility and its physical setting;

33 (C) Past uses of the site;

34 (D) Hazardous waste handling processes;

35 (E) Types of permitted hazardous waste management units;

36 (F) Normal and maximum production rates of hazardous waste treatment,
37 transfer, and storage;

38 (G) Type and quantity of hazardous waste stored and treated;

39 (H) Overall process flow diagrams showing hazardous waste movement or flow
40 through the facility;

41 (I) Description of vehicular traffic, including delivery truck traffic under normal and
42 maximum permitted operations; and

1 (J) Listing of other environmental permits and expiration dates as listed in the
2 Part A permit application.

3 (6) The Health Risk Assessment Assumptions Checklist must include:

4 (A) Identification of Known and Potential Sources of Chemicals of Potential
5 Concern. This information must include the following, if applicable:

- 6 1. air emission information including air sources listed by individual
7 processes or equipment (tanks, valves, scrubbers, etc.), pollutants, daily
8 emission limitations stipulated by a Title V operating permit or a local air
9 district operating permit, and a summary of the monitoring data for the
10 most recent three (3) years;
- 11 2. wastewater discharge information, including discharge points, pollutants
12 discharged, daily discharges stipulated in a National Pollutant Discharge
13 Elimination System permit or by California waste discharge requirements
14 (WDRs), and a summary of the monitoring data for the most recent three
15 (3) years;
- 16 3. soil or groundwater contamination plume information at and under the
17 facility, including potential sources, chemicals of potential concern, a
18 summary of available groundwater monitoring, and a summary of
19 available indoor vapor intrusion monitoring data for the most recent three
20 (3) years;
- 21 4. list of all known spills documented in accordance with any previous
22 authorization of hazardous waste activities or subject to hazardous
23 materials reporting requirements under state or federal laws; and
24 5. assessment of any foreseeable accidents or upset conditions, such as
25 fire, floods, earthquakes, or catastrophic releases;

26 (B) Hazard Identification of Chemicals of Potential Concern. This information
27 must include the following:

- 28 1. identification of chemicals of potential concern for each environmental
29 media; and
- 30 2. chemicals of potential concern's transformation or degradation
31 products, if applicable.

32 (C) Toxicity Assessment. The toxicity assessment of chemicals of potential
33 concern must include a description of the relationship between the
34 concentrations of the chemicals of potential concern (dose) and their anticipated
35 toxic reaction (response). This information must include the following:

- 36 1. identification of the inherent chemical hazard traits or toxicity
37 characteristics of the chemicals of potential concern;
- 38 2. regulatory screening levels for each chemical of potential concern listed
39 by environmental media for the protection of human health developed by
40 state or federal environmental agencies, if available; and
- 41 3. categories of receptors likely affected or most susceptible to the
42 chemicals of potential concern, if applicable.

1 (D) Exposure Assessment. This information must include all the following:

- 2 1. chemical transport processes that influence the movement of each
- 3 chemical of potential concern;
- 4 2. identification of, and rationale for, exposure scenarios of each of the
- 5 chemicals of potential concern in environmental media;
- 6 3. identification of, and rationale for, potential receptors; and
- 7 4. identification of, and rationale for, potential or complete exposure
- 8 pathways.

9 (7) Conceptual Site Model.

10 (A) A conceptual site model must include a written description and a visual

11 representation of actual or predicted relationships between receptor populations

12 and the chemicals of potential concern to which they may be exposed. The

13 conceptual site model may be represented as a diagram, map, cross section,

14 matrix, or other graphic to describe the site condition or environmental setting.

15 (B) An applicant shall submit a conceptual site model that outlines and includes:

- 16 1. potential and actual, sources of emissions, and releases;
- 17 2. a listing of chemicals of potential concern and release mechanisms;
- 18 3. impacted environmental media or medium;
- 19 4. potential exposure pathways, including fate and transport routes; and
- 20 5. exposure routes for each potential receptor on and adjacent to the
- 21 facility.

22 (8) HRA Questionnaire Department's Completeness Determination. Within ninety (90)

23 days of receipt of the HRA Questionnaire, the Department shall evaluate the applicant's

24 HRA Questionnaire for completeness of information required in paragraphs (e)(4)

25 through (e)(7).

26 (A) The Department may require the applicant to submit supplemental

27 information to complete the Department's evaluation of the HRA Questionnaire.

- 28 1. the applicant shall submit to the Department the supplemental
- 29 information within thirty (30) days of receipt of the request for
- 30 supplemental information.
- 31 2. Within thirty (30) days of receipt of the supplemental information, the
- 32 Department shall complete its evaluation of the HRA Questionnaire.
- 33 3. If the Department determines that the supplemental information is not
- 34 submitted in a timely manner, is unacceptable, or does not fulfill the
- 35 requirements of the HRA Questionnaire, the Department shall require the
- 36 facility owner or operator to complete a Screening Level HRA in
- 37 accordance with the requirements of paragraphs (e)(9)(A), (e)(10) and
- 38 (e)(13).

39 (B) The Department shall make one of the following determinations:

- 40 1. require a Screening Level HRA in accordance with the requirements of
- 41 paragraphs (e)(10) and (e)(13). The Department shall require a Screening
- 42 Level HRA if any of the following factors is present:

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

- 1 a. evidence of limited onsite contamination; or
2 b. normal management of hazardous waste results in the release,
3 emission, or discharge of any pollutant or chemical of potential
4 concern with no offsite consequences; or
5 c. there may be a potential complete pathway between the
6 chemical of potential concern and potential receptors; or
7 d. foreseeable risk conditions may impact onsite receptors.
- 8 2. require a Baseline HRA in accordance with the requirements of
9 paragraphs (e)(16) and (e)(19). The Department shall require a Baseline
10 HRA if any of the following factors is present:
- 11 a. evidence of facility-wide onsite contamination or contamination
12 has migrated beyond the facility boundaries; or
13 b. normal management of hazardous waste results in the release,
14 emission, or discharge of any pollutant or chemical of potential
15 concern with offsite consequences; or
16 c. there is a potential complete pathway between the chemical of
17 potential concern and potential receptors; or
18 d. foreseeable risk of upset scenarios may impact offsite receptors.
- 19 3. not require a Screening Level HRA or a Baseline HRA. The Department
20 shall require no further action if all the following factors are met:
- 21 a. evidence of no onsite contamination;
22 b. normal management of hazardous waste does not result in the
23 release, emission, or discharge of any pollutant or chemical of
24 potential concern;
25 c. there is no potential complete pathway between the chemical of
26 potential concern and potential receptors; and
27 d. the foreseeable onsite risk of upset scenarios does not impact
28 any offsite receptors.
- 29 (9) HRA Questionnaire Notice. The Department shall notify the applicant in writing of its
30 HRA Questionnaire determination in accordance with paragraph (8) of this subsection
31 and provide the basis of the determination.
- 32 (A) Within ninety (90) days of the Department's determination that a Screening
33 Level HRA is required, the applicant shall consult with the Department and
34 submit a Screening Level HRA work plan.
- 35 (B) Within ninety (90) days of the Department's determination that a Baseline
36 HRA is required, the applicant shall consult with the Department and submit a
37 Baseline HRA work plan.
- 38 (10) Screening Level Health Risk Assessment Work Plan.
- 39 (A) The Screening Level HRA work plan must include a plan to complete a
40 Screening Level HRA that compares the concentration of a chemical of potential
41 concern to media specific screening levels for relevant receptors. The Screening
42 Level HRA work plan must describe the approach to evaluate potential human

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 health risks in the Screening Level HRA posed by conditions and operations at
2 the facility. The work plan and subsequent Screening Level HRA must include all
3 the following:

4 1. exposure assessment. The exposure assessment must be assessed
5 using the maximum permitted capacity for treatment, storage, transfer,
6 and disposal of hazardous waste requested in the permit application and
7 include only simple exposure pathways; and

8 2. the regulatory screening levels listed by environmental media for the
9 protection of human health must be based on peer reviewed toxicity
10 information and tools developed by the Office of Environmental Health
11 Hazard Assessment, and the United States Environmental Protection
12 Agency.

13 (11) Screening Level HRA Work Plan Department Determination. Within sixty (60) days
14 of receipt of the Screening Level HRA work plan, the Department shall evaluate the
15 work plan for compliance with the requirements of subparagraph (e)(10)(A).

16 (A) The Department may require the applicant to submit supplemental
17 information to ensure that the Screening Level HRA work plan is complete.

18 1. the applicant shall submit to the Department the supplemental
19 information within thirty (30) days of receiving the request for
20 supplemental information; and

21 2. within thirty (30) days of receipt of the supplemental information, the
22 Department shall complete its evaluation of the supplemental information
23 and provide a determination to accept or reject the Screening Level HRA
24 work plan.

25 (12) Screening Level HRA Work Plan Notice. The Department shall notify the applicant
26 in writing of its determination to accept or reject the Screening Level HRA work plan and
27 provide the basis of the determination. The Department shall specify a due date to
28 complete the Screening Level HRA.

29 (A) For a Screening Level HRA, the due date is 180 days after the date the
30 Department issues a Screening Level HRA work plan notice, unless the
31 Department specifies an alternative due date.

32 (13) Screening Level HRA Submittal. The applicant shall submit to the Department the
33 Screening Level HRA that complies with subparagraph (e)(10)(A) and the accepted the
34 Screening Level HRA work plan by the due date specified in the notice in accordance
35 with subparagraph (e)(12)(A).

36 (14) Screening Level HRA Department Determination. Within ninety (90) days of receipt
37 of the Screening Level HRA, the Department shall evaluate the Screening Level HRA
38 for completeness with subparagraph (e)(10)(A) and the accepted Screening Level HRA
39 work plan.

40 (A) The Department may require the applicant to submit supplemental
41 information to ensure completeness of the Screening Level HRA.

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

- 1 1. the applicant shall submit to the Department the supplemental
- 2 information within thirty (30) days of receiving the request for
- 3 supplemental information; and
- 4 2. within thirty (30) days of receipt of the supplemental information, the
- 5 Department shall complete its evaluation of the supplemental information
- 6 and provide a determination of the Screening Level HRA.

7 (B) The Department shall either:

- 8 1. accept the Screening Level HRA; or
- 9 2. reject the Screening Level HRA and require a Baseline HRA.

10 (15) Screening Level HRA Notice. The Department shall notify the applicant in writing of

11 its determination based on its evaluation of the Screening Level HRA, and if applicable,

12 the need to prepare and submit a Baseline HRA. The Department shall provide the

13 basis for its determination.

14 (A) If the Department determines that a Baseline HRA is required, the applicant

15 shall submit to the Department a Baseline HRA work plan to the Department

16 within ninety (90) days of receipt of the notice that a Baseline HRA is required.

17 (16) Baseline Health Risk Assessment Work Plan.

18 (A) The applicant shall submit to the Department, for its evaluation and approval,

19 a Baseline HRA work plan. The Baseline HRA work plan must describe the

20 approach to estimate potential human health risks in the Baseline HRA posed by

21 conditions and operations at the facility. The work plan and subsequent Baseline

22 HRA must include all the following:

- 23 1. toxicity assessment for each of the chemicals of potential concern,
- 24 including appropriate toxicity values;
- 25 2. reasonable maximum exposure concentration estimates based on
- 26 sampling or modeling data;
- 27 3. identification of receptors and complex exposure pathways;
- 28 4. risk assessment for all pathways, and chemicals of potential concern for
- 29 cancer and non-cancer health impacts;
- 30 5. quantification of both exposure and risk characterization; and
- 31 6. any additional information specified by the Department.

32 (B) The due dates for the Baseline HRA work plan are specified in

33 subparagraphs (e)(3)(A), (e)(9)(B), or (e)(15)(A). The applicant shall submit the

34 Baseline HRA work plan within ninety (90) days of receipt of the notice that a

35 Baseline HRA is required, or as provided pursuant to subparagraph (e)(3)(A),

36 unless another due date is provided by the Department.

37 (17) Baseline HRA Work Plan Department Determination. Within sixty (60) days of

38 receipt of the Baseline HRA work plan, the Department shall evaluate the work plan for

39 completeness with paragraph (e)(1), and subparagraph (e)(16)(A).

40 (A) The Department may require the applicant to submit supplemental

41 information to ensure completeness of the Baseline HRA work plan.

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

- 1 1. the applicant shall submit to the Department the supplemental
2 information within thirty (30) days of receiving the request for
3 supplemental information; and
4 2. within thirty (30) days of receipt of the supplemental information, the
5 Department shall complete its evaluation of the supplemental information
6 and provide a determination to accept or reject the Baseline HRA work
7 plan.

8 (18) Baseline HRA Work Plan Notice. The Department shall notify the applicant in
9 writing of its determination to accept or reject the work plan and provide the basis of the
10 determination. The Department shall specify a due date for the submittal of the Baseline
11 HRA, if applicable.

12 (A) For a Baseline HRA, the due date is 180 days after the date the Department
13 issues the Baseline HRA work plan notice, unless the Department specifies an
14 alternative due date.

15 (19) Baseline HRA Submittal. The applicant shall submit to the Department the Baseline
16 HRA that complies with paragraph (e)(1), subparagraph (e)(16)(A) and the accepted
17 Baseline HRA work plan by the due date specified in the notice in accordance with
18 subparagraph (e)(18)(A).

19 (20) Baseline HRA Department Determination. Within ninety (90) days, of receipt of the
20 Baseline HRA, the Department shall evaluate the Baseline HRA for completeness with
21 paragraph (e)(1), subparagraph (e)(16)(A) and the accepted Baseline HRA work plan.

22 (A) The Department may require the applicant to submit supplemental
23 information to complete its evaluation of the Baseline HRA.

- 24 1. the applicant shall submit to the Department the supplemental
25 information within thirty (30) days of receipt of the supplemental
26 information; and
27 2. within thirty (30) days of receipt of the supplemental information, the
28 Department shall complete its evaluation of the supplemental information
29 and provide a determination to accept or reject the Baseline HRA.

30 (21) Baseline HRA Notice. The Department shall notify the applicant in writing of its
31 determination as to the Baseline HRA and provide the basis of the determination.

32
33 Note: Authority cited: Sections 25150, 25159, 25200.21, 58004, and 58012, Health and Safety
34 Code. Reference: Sections 25159.5 Health and Safety Code; 40 CFR Section 270.43.

1 **Appendix I. Classification of Permit Modifications**

2

Modifications	Class
B. General Facility Standards	
1. Changes to waste sampling or analysis methods:	
a. To conform with Department guidance or regulations.	1
b. To incorporate changes associated with F039 (multi- source leachate) sampling or analysis methods	1 *
c. To incorporate changes associated with underlying hazardous constituents in ignitable or corrosive wastes	1 *
d. Other changes.	2
2. Changes to analytical quality assurance/control plan:	
a. To conform with Department guidance or regulations.	1
b. Other changes.	2
3. Changes in procedures for maintaining the operating record.	1
4. Changes in frequency or content of inspection schedules.	2
5. Changes in the training <u>program</u> - plan :	
a. That affect the type or decrease the amount of training given to employees.	2
b. Other changes.	1
6. Contingency plan:	
a. Changes in emergency procedures (i.e., spill or release response procedures).	2
b. Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed.	1
c. Removal of equipment from emergency equipment list.	2
d. Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan.	1

3

4

5 *Note: Authority cited: Sections 25150, 25159, 25159.5, 25179.6, 58004 and 58012, Health and*
6 *Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR*
7 *Section 270.42, and 40 CFR Part 270, Appendix I.*

8

1 **CHAPTER 21. Procedures for Hazardous Waste Permit Decisions**

2
3 **Add** Article 3, sections 66271.50, 66271.51, 66271.52, 66271.53, 66271.54, 66271.55,
4 66271.56, 66271.57, and 66271.58 of Title 22 of the California Code of Regulations, to read:

5
6 **Article 3. Violations Scoring Procedure for Hazardous Waste Facility Operations**

7
8 **§ 66271.50 Definitions and Applicability**

9 (a) For purposes of this article, the following terms have the following meanings.

10 (1) "Compliance inspection" means an on-site evaluation of a hazardous waste facility's
11 compliance with any operating requirements set out in statute, regulations, permit,
12 order, or other grant of authorization issued by the Department. "Compliance inspection"
13 includes, but is not limited to, scheduled and unscheduled inspections by the
14 Department, whether during routine operations or in response to an unexpected
15 occurrence or event at the facility.

16 (2) "Facility Violations Scoring Procedure Score" or "Facility VSP Score" means the
17 numeric value arrived at upon completion of all of the steps specified in section
18 66271.54(a).

19 (3) "Repeat violation" means two or more violations:

20 (A) of the same statutory or regulatory requirement in separate compliance
21 inspections; or

22 (B) of the same term or condition or provision of a permit, order, settlement
23 document, decree or other document establishing requirements upon operations
24 at the facility.

25 (4) "Violations scoring procedure" means the totality of the criteria and steps set out in
26 this article that govern the consideration of a facility's compliance history by the
27 Department in making specified permit decisions and the remedies available to facility
28 owners and operators in response to decisions proposed or taken by the Department
29 under this article.

30 (b) Except as provided for in paragraph (1), this article applies to operating hazardous waste
31 facilities.

32 (1) Hazardous waste facilities solely authorized by following permits or orders are not
33 subject to this article:

34 (A) postclosure permits or orders; and

35 (B) permits or permit modifications for closure only.

36 (c) The Department shall only consider Class I violations for purposes of the Facility VSP
37 Score in accordance with sections 66271.51 through 66271.54.

38 (d) For purposes of the Facility VSP Score, the Department may not consider any of the
39 following:

40 (1) "Class II violations;"

41 (2) "Minor violations," as defined in Health and Safety Code section 25117.6; or

42 (3) the assessment of penalties under Chapter 22.

1 (e) The Department shall use the violations scoring procedure in assessing a hazardous
2 waste facility's compliance history when making a decision under this article regarding the
3 issuance, denial, modification, suspension, or revocation of a hazardous waste facility
4 permit.

5 (f) This article does not limit or modify the Department's authority to deny, revoke, suspend,
6 or modify any permit, registration, or certificate pursuant to Health and Safety Code sections
7 25186, 25186.05, 25186.2, 25186.2.5, 25189.3, 25200.8, or any other statute or regulation.

8
9 Note: Authority Sections 25150, 25200.21, 58004 and 58012, Health and Safety Code.

10 Reference: Sections 25110.8.5, 25117.6, 25180(d), 25186, 25186.05, 25186.2, 25186.2.5,
11 25189.3, and 25200.8, Health and Safety Code.

12
13 **§ 66271.51 Determining the Initial Score for Each Class I Violation**

14 (a) Initial Class I Violations Score. The Department shall determine an initial score for each
15 Class I violation that occurred during the preceding ten (10) year period. When calculating
16 the initial score, the Department shall determine the potential harm to public health and
17 safety or the environment posed by the violation, and the extent of deviation from hazardous
18 waste management requirements posed by the violation.

19 (b) Potential Harm. When determining the potential harm to public health and safety or the
20 environment posed by a Class I violation, the Department shall categorize the potential
21 harm as "major," "moderate" or "minimal."

22 (1) The categories for degree of potential harm are defined as follows:

23 (A) Major - The characteristics and/or amount of the substance involved present
24 a major threat to public health and safety or the environment and the
25 circumstances of the violation indicate a high potential for harm;

26 (B) Moderate - The characteristics and/or amount of the substance involved do
27 not present a major threat to public health and safety or the environment, and the
28 circumstances of the violation do not indicate a high potential for harm and the
29 threat posed is more than minimal;

30 (C) Minimal - The characteristics and/or amount of the substance involved
31 present a minimal threat to public health and safety or the environment, and the
32 circumstances of the violation indicate a low potential for harm.

33 (2) In determining the degree of potential harm, the Department shall consider the
34 following factors:

35 (A) The characteristics of the substance involved,

36 (B) The amount of the substance involved,

37 (C) The extent to which human life or health is threatened,

38 (D) The extent to which animal life is threatened,

39 (E) The extent to which the environment is threatened, and

40 (F) The extent to which potable water supplies are threatened.

41 (3) Except as provided in paragraph (6), only violations involving one or more of the
42 following may be classified as posing a major potential harm:

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

- 1 (A) The management of hazardous waste; or
2 (B) The absence of adequate financial assurance for closure, postclosure,
3 corrective action, or liability coverage; or
4 (C) The absence of a contingency plan, a waste analysis plan, or a closure plan.
5 (4) Potential harm for violations of financial requirements shall be determined by
6 considering the amount of closure, postclosure, or corrective action costs for which
7 there is no financial assurance or the amount of required liability coverage that is
8 absent, and the likelihood that injury or damages, if they occur, will not be compensated
9 due to inadequacy in the coverage.
10 (5) Financial violations that are documentation errors or omissions that do not affect
11 actual functioning of adequate financial assurance for closure, postclosure, corrective
12 action, or liability coverage may not be classified as posing a major potential harm.
13 (6) Groundwater monitoring documentation violations may have a major, moderate, or
14 minimal potential for harm. The Department shall select the category for potential harm
15 based on the extent to which the violation may lead directly to environmental harm,
16 have a potential for harm, or cause an inability to detect releases to groundwater.
17 (c) Extent of Deviation: When determining the extent of deviation from hazardous waste
18 management requirements posed by a Class I violation, the Department shall categorize the
19 extent of deviation as "major," "moderate," or "minimal."
20 (1) The categories for extent of deviation from hazardous waste management
21 requirements are defined as follows:
22 (A) Major - The act deviates from the requirement to such an extent that the
23 requirement is completely ignored and none of its provisions are complied with,
24 or the function of the requirement is rendered ineffective because some of its
25 provisions are not complied with.
26 (B) Moderate - The act deviates from the requirement, but the requirement
27 functions to some extent, although not all of its important provisions are complied
28 with.
29 (C) Minimal - The act deviates in a minor way from the requirement. The
30 requirement functions nearly as intended, but not as well as if all provisions had
31 been met.
32 (2) Unless otherwise specified in this article, the extent of deviation of a single
33 requirement may be major, moderate, or minimal depending on the totality of the
34 circumstances.
35 (d) Matrix for Scoring. The Department shall use the matrix set forth in this subsection to
36 determine the initial score for each Class I violation, selecting the score from the matrix cell
37 that corresponds to the appropriate potential harm and extent of deviation categories.
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		<u>Potential Harm</u>		
		<u>Major</u>	<u>Moderate</u>	<u>Minimal</u>
<u>Extent of Deviation</u>	<u>Major</u>	<u>25</u>	<u>20</u>	<u>15</u>
	<u>Moderate</u>	<u>20</u>	<u>15</u>	<u>6</u>
	<u>Minimal</u>	<u>15</u>	<u>6</u>	<u>2</u>

1
2 Note: Authority cited: Sections 25150, 25200.21, 58004 and 58012, Health and Safety Code.
3 Reference: Sections 25110.8.5, 25186, 25186.05, 25187, and 25189.2, Health and Safety
4 Code

5
6 **§ 66271.52 Adjustment to the Initial Score for Repeat Class I Violations**

- 7 (a) The Department shall adjust the initial score for each Class I violation to reflect repeat
8 violations.
9 (b) The Department shall make an adjustment for a repeat violation only if the facility owner
10 or operator has been given at least one Notice to Comply or Notice of Violation at the same
11 facility within the prior three (3) years or last three (3) inspections, whichever time period is
12 longer, for the same or similar requirement and such Notice to Comply or Notice of Violation
13 has not been cancelled, retracted, withdrawn or successfully challenged in an administrative
14 or judicial proceeding. The adjustment for a repeat violation based on issuance of a Notice
15 to Comply or Notice of Violation shall occur regardless whether the owner or operator
16 complied with a Notice to Comply or cured a violation after receipt of the Notice of Violation.
17 (c) The Department shall adjust each initial Class I violation score based on the number of
18 times a violation or similar violation is repeated. The Department shall make the adjustment
19 based on the following matrix:

<u>Adjustment Factor for Repeat Violations</u>	<u>Circumstance</u>
<u>Upward Adjustment of 25 percent</u>	<u>Second instance</u>
<u>Upward Adjustment of 50 percent</u>	<u>Third instance</u>
<u>Upward Adjustment of 100 percent</u>	<u>Fourth or more instances</u>

21
22 NOTE: Authority cited: Sections 25150, 25200.21, 58004 and 58012, Health and Safety Code.
23 Reference: Sections 25110.8.5, 25186, and 25186.05,

24
25 **§ 66271.53 Inspection Violation Score**

- 26 (a) The violation score for a Class I violation consists of the initial score calculated pursuant
27 to section 66271.51 and any adjustment made for repeat violations pursuant to section
28 66271.52.

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

- 1 (b) The preliminary inspection violation score is the initial sum calculated by the Department
2 of the scores for all Class I violations found during a compliance inspection, which may span
3 more than one day.
- 4 (c) For compliance inspections that occur after the effective date of these regulations, the
5 Department shall send a preliminary inspection violation score to the facility owner or
6 operator concurrently with the inspection report provided to the owner or operator pursuant
7 to section 66272.1(c).
- 8 (d) A facility owner or operator who seeks to dispute a preliminary inspection violation score
9 may do so by filing a Preliminary Inspection Violation Score Dispute Document (“Dispute
10 Document”) with the Department within thirty (30) days of the Department sending the
11 preliminary inspection violation score pursuant to subsection (d). Failure of the facility owner
12 or operator to follow the procedures or timelines specified in this section for a dispute
13 subject to this section is a waiver of the right to further contest the disputed issue and shall
14 constitute a failure to exhaust administrative remedies.
- 15 (e) The Dispute Document must contain all the following:
- 16 (1) A statement that describes the basis of the dispute and the relief sought;
17 (2) Any claimed erroneous facts, assumptions, approaches, or conclusions of law made
18 by the Department;
19 (3) A statement describing any efforts already made by the owner or operator to resolve
20 the dispute with the Department; and
21 (4) Any photographs, documents, or any other material that supports the owner’s or
22 operator’s position regarding the disputed preliminary inspection violation score.
- 23 (f) The Director or Director’s designee shall issue a written decision granting or denying the
24 relief sought, in whole or in part, within forty-five (45) days after receipt of a Dispute
25 Document under subsection (e). Failure of the Department to issue a written decision within
26 forty-five (45) days of receipt of the Dispute Document does not constitute a partial or
27 complete granting of the relief sought.
- 28 (g) If the relief sought is denied in whole or in part, the Department shall include in its
29 decision a short and plain description of the basis for the denial of the relief sought. A
30 decision under subsection (f) is the Department’s final decision and is not subject to
31 additional administrative dispute resolution.
- 32 (h) For inspections not finalized before the effective date of this regulation, the preliminary
33 inspection violation score becomes the final inspection violation score if the facility owner or
34 operator does not file a Preliminary Inspection Score Dispute Document (“Dispute
35 Document”) with the Department within thirty (30) days of the date the Department sends
36 the preliminary inspection violation score document pursuant to subsection (c) to the facility
37 owner or operator or upon conclusion of the dispute resolution procedures under subsection
38 (f), if applicable.
- 39 (i) For inspections finalized before the effective date of this regulation, the preliminary
40 inspection violation score is the final inspection violation score.

1 (j) Within ninety (90) days from the date the preliminary inspection violation score is sent to
2 the facility owner or operator, the Department shall post the final inspection violation score
3 on the Department's website.

4
5 NOTE: Authority cited: Sections 25150, 25200.21, 58004, and 58012, Health and Safety Code.
6 Reference: Sections 25110.8.5, 25186, and 25186.05, Health and Safety Code

7
8 **§ 66271.54 Facility Violations Scoring Procedure (VSP) Score and Compliance Tiers**

9 (a) Except as provided in paragraphs (1) and (2), the Facility VSP Score consists of the sum
10 of the final inspection violation scores for all compliance inspections conducted during the
11 preceding ten (10) year period, divided by the number of such inspections.

12 (1) For compliance evaluations reports finalized after the effective date of these
13 regulations, no inspection violation score may be included in the Facility VSP Score
14 unless the preliminary inspection violation score was sent the to the facility owner or
15 operator in accordance with subsection (e) of section 66271.53.

16 (2) The score for any Class I violation that has been cancelled, retracted, withdrawn or
17 successfully challenged in an administrative or judicial proceeding may not be included
18 in the Facility VSP Score.

19 (b) The Department shall assign a facility to a compliance tier based on the Facility VSP
20 Score as follows:

21 (1) "Acceptable." A facility that receives a Facility VSP Score less than 20 shall be
22 designated as having a Facility VSP Score that is acceptable.

23 (2) "Conditionally Acceptable." A facility that receives a Facility VSP Score equal to or
24 above 20 and less than 40 shall be designated as having a Facility VSP Score that is
25 conditionally acceptable.

26 (3) "Unacceptable." A facility that receives a Facility VSP Score equal to or greater than
27 40 shall be designated as having a Facility VSP Score that is unacceptable.

28 (c) On or before September 30 of each calendar year, the Department shall provide written
29 notice of the Facility VSP Score and the assigned compliance tier to each facility owner or
30 operator subject to this article.

31 (d) On or before December 31 of each calendar year, the Department shall post to the
32 Department's website the Facility VSP Score and assigned compliance tier for each facility
33 subject to this article.

34
35 NOTE: Authority cited: Sections 25150, 25200.21, 58004, and 58012, Health and Safety Code.
36 Reference: Sections 25110.8.5, 25186, and 25186.05, Health and Safety Code

37
38 **§ 66271.55 Permit Decisions**

39 (a) Permit Decisions. The Department shall conduct a complete review of the facility's
40 compliance history when making a decision to approve, deny, revoke, suspend, or modify a
41 permit under this article.

42 (b) A complete review of the facility's compliance history shall include all of the following:

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

- 1 (1) The facility's compliance tier based on the Facility VSP Score;
- 2 (2) Class II and minor violations not quantified as part of the Facility VSP Score;
- 3 (3) The facility's compliance with any orders, stipulations or decrees issued by the
- 4 Department, whether unilateral or consensual, settlement agreements, or judgments
- 5 pertaining to compliance matters, and including corrective action;
- 6 (4) The disclosure statement pursuant to Health and Safety Code sections 25112.5 and
- 7 25200.4;
- 8 (5) The facility's safety record; and
- 9 (6) The facility's compliance with financial assurance for closure, postclosure, corrective
- 10 action or financial liability coverage pursuant to article 8 of chapters 14 and 15, as
- 11 applicable;
- 12 (7) Information in audit reports provided to the Department pursuant to the requirements
- 13 of 66271.56 and 66271.57; and
- 14 (8) Any other information allowed by law.

15 (c) A complete review of the facility's compliance history shall also include a review of the
16 following information to the extent such information is readily available to the Department:

- 17 (1) The owner's or operator's knowledge or intent in the commission of any violations;
- 18 (2) The record of resolved complaints received against the facility;
- 19 (3) Violations of requirements of other federal, state or local environmental agencies;
- 20 and
- 21 (4) The record of the owner's or operator's actions with regard to return to compliance,
- 22 and cooperation with the Department.

23
24 NOTE: Authority cited: Sections 25150, 25200.21, 58004, and 58012, Health and Safety Code.
25 Reference: Sections 25110.8.5, 25186, and 25186.05, Health and Safety Code

26
27 **§ 66271.56 Requirements for Facility VSP Score of "Conditionally Acceptable"**

28 (a) The owner or operator of a facility that receives a "conditionally acceptable" Facility VSP
29 Score shall comply with the following requirements:

- 30 (1) Compliance Audits: The owner or operator shall prepare and provide to the
- 31 Department third-party compliance audits in accordance with all of the following:
- 32 (A) Selection of Auditor. The owner or operator shall retain an independent third-
- 33 party compliance auditor in accordance with the following:
- 34 1. the owner or operator shall, within sixty (60) days of notification of an
- 35 assigned compliance tier of Conditionally Acceptable pursuant to
- 36 subsection 66271.54, provide to the Department at least three (3) names,
- 37 in order of preference, and their qualifications of proposed independent
- 38 third-party auditors who are qualified to conduct hazardous waste facility
- 39 audits to determine compliance with hazardous waste facility
- 40 requirements. At a minimum, an auditor shall:
- 41 a. have graduated from an accredited college or university and
- 42 possess a Bachelor of Science degree, in a physical or biological

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

- 1 science, engineering, law, or a related field. State certification,
2 licensing or registration, or certification by a nationally recognized
3 professional association in a physical or biological science,
4 engineering or law shall be considered equivalent to such training;
5 and
6 b. possess a minimum of five (5) years full time professional-level
7 experience performing environmental audits relating to hazardous
8 waste facilities;
- 9 2. the Department, shall within fifteen (15) days of receiving the name and
10 qualifications of the proposed auditor, provide a written notice to the owner
11 or operator that the Department approves or rejects the selection of the
12 third-party auditor on the basis of qualifications, prior conduct on the part
13 of the proposed auditor, or conflict of interest;
- 14 3. if the Department approves one of the proposed auditors selected by
15 the owner or operator, the owner or operator shall, within thirty (30) days
16 of the Department's approval, provide written notification to the
17 Department that the owner or operator has retained the services of the
18 auditor approved by the Department;
- 19 4. if the Department rejects all proposed auditors submitted by the owner
20 or operator to the Department pursuant to subparagraph 1., the
21 Department shall, within thirty (30) days of the Department's notice
22 pursuant to paragraph 2., select an auditor qualified to perform the audit
23 and inform the owner or operator of the auditor selected by the
24 Department; and
- 25 5. if the Department selects an auditor pursuant to subparagraph 4., the
26 owner or operator shall, within thirty (30) days of receipt of the notice
27 pursuant to paragraph 4., retain the services of the auditor selected by the
28 Department.
- 29 (B) Submission of Audits. The owner or operator shall submit to the Department
30 the audit reports prepared by the independent third-party auditor that meet the
31 requirements of this subparagraph according to the Audit Schedule in
32 subparagraph (C). Audit reports prepared pursuant to this subsection must, at a
33 minimum, include all of the following:
- 34 1. a complete description and discussion of all audit objectives, audit
35 criteria, audit activities, audit findings and conclusions, recommendations,
36 and all evidence relied upon to support the audit conclusions;
37 2. a complete inspection and review of all facility operations related to
38 hazardous waste and all monitoring, records, reports and other
39 information necessary to evaluate and determine facility compliance with
40 all terms of the facility's hazardous waste permit, and all applicable
41 hazardous waste laws, regulations and orders;

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

- 1 3. sampling and testing of potentially hazardous materials as necessary to
2 determine compliance with all terms of the facility's hazardous waste
3 permit, and all applicable hazardous waste laws, regulations and orders;
4 4. a complete description of the inspection(s) completed, a summary of all
5 sampling and testing conducted and associated results, and discussion of
6 all information reviewed;
7 5. review of all safety practices and identification of all accidents in the
8 preceding one (1) year, and any unsafe practices or conditions observed
9 that could lead to accidents;
10 6. a brief description of any written advisements or determination of
11 violations, including, but not limited to, Notices of Violation and inspection
12 reports directed to the facility by any local, state, or federal agency that
13 identifies any violation of any hazardous waste facility requirement; and
14 7. discussion of all findings and deficiencies related to facility; and
15 compliance, including identification of all instances of noncompliance.

16 (C) Audit Schedule. The owner or operator shall submit at least two audit reports
17 to the Department as follows:

- 18 1. the first audit report shall be submitted no later than 270 days after
19 notification pursuant to subsection 66271.54; and
20 2. the second audit report shall be submitted no earlier than 180 days and
21 no later than one (1) year after the first evaluation.

22 (2) Compliance Implementation Plan. The owner or operator shall, within thirty (30) days
23 following the deadline to submit each audit report pursuant to subparagraph (C), submit
24 a corresponding compliance implementation plan as follows:

- 25 (A) The compliance implementation plan must describe all actions needed to
26 correct all deficiencies and address all findings identified in the audit report.
27 (B) The compliance implementation plan must identify all permits and permit
28 modifications required by the Department and any other federal, state or local
29 agency in order to implement the actions described in subparagraph (A).
30 (C) The compliance implementation plan must include deadlines for all actions to
31 correct deficiencies and to submit applications for all permits or permit
32 modifications needed to implement such actions.

33 (b) The Department may require the owner or operator of a facility to revise its compliance
34 implementation plan prior to its approval of the plan. Upon approval of a plan, all actions and
35 schedules contained therein shall be enforceable commitments.

36 (c) The Department may rely upon audit reports for the purposes of enforcement and
37 calculation of inspection violation scores and Facility VSP Scores.

38 (d) The Department may also impose other responses on a facility owner or operator. These
39 actions include, but are not limited to, one or more of the following:

- 40 (1) Imposing a shorter operating period for the facility's permit than that specified in the
41 permit;

1 (2) Restricting or prohibiting hazardous waste management activities at the facility that
2 are authorized in the permit;

3 (3) Imposing additional conditions on hazardous waste management activities beyond
4 those specified in the permit; or

5 (4) Imposing requirements designed to mitigate potential harm associated with
6 noncompliant activities or events, including, but not limited to, community benefit
7 agreements or projects, or other enforceable and measurable actions to reduce impacts
8 or alleviate adverse conditions caused by the facility's noncompliance with hazardous
9 waste management requirements.

10
11 NOTE: Authority cited: Sections 25150, 25200.21, 58004, and 58012, Health and Safety Code.
12 Reference: Sections 25110.8.5, 25186, and 25186.05, Health and Safety Code

13
14 **§ 66271.57 Requirements for Facility VSP Score of "Unacceptable"**

15
16 (a) The Department may deny, suspend, or revoke a permit for a facility that has an
17 "unacceptable" Facility VSP score, if the Department finds, based on substantial evidence,
18 one or more of the following:

19 (1) The current conditions at the facility present an imminent or substantial
20 endangerment to the public;

21 (2) The complete review of the facility's compliance history demonstrates at least one of
22 the following:

23 (A) The facility is either unwilling or unable to operate the facility in compliance
24 with its permit, or any applicable orders, or hazardous waste laws or regulations,
25 or more than one of these;

26 (B) The facility, as constructed, cannot be operated in compliance with its permit,
27 or any applicable orders, or hazardous waste laws or regulations, or more than
28 one of these;

29 (C) Continued operation of the facility is likely to result in significant adverse
30 health impacts to workers or the public; or

31 (D) The facility has not provided adequate financial assurance for closure,
32 postclosure, corrective action or financial liability coverage as required in article 8
33 of chapters 14 and 15, as applicable.

34 (3) One or more audit reports required pursuant to this article demonstrate an ongoing
35 pattern of noncompliance with applicable hazardous waste requirements or a failure to
36 fully implement actions to correct deficiencies and address findings of prior audits;

37 (4) The complete review of the facility's compliance history, in conjunction with a review
38 of facility compliance with the requirements of other federal, state or local environmental
39 regulations or permits, demonstrates any of the following:

40 (A) The facility is either unwilling or unable to operate the facility in compliance
41 with its permit(s) or any applicable orders, laws or regulations, or more than one
42 of these;

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 (B) The facility, as constructed, cannot be operated in compliance with its permit
2 and/or any applicable orders, laws or regulations; or

3 (C) Continued operation of the facility is likely to result in significant adverse
4 health impacts to workers or the public.

5 (b) The Department may order a facility that has an “unacceptable” Facility VSP Score to
6 take the following actions, including, but not limited to:

7 (1) conduct independent third-party compliance audits consistent with subsection
8 66271.56(a)(1)(A) and (B);

9 (2) implement facility improvements, including, but not limited to, repairing, replacing, or
10 augmenting hazardous waste management units, equipment, devices, or secondary
11 containment;

12 (3) restrict or cease the operation of a hazardous waste management unit that is the
13 basis of the facility’s violations;

14 (4) conduct public participation and community engagement activities, including, but not
15 limited to, public information meetings with the surrounding community and distribution
16 of fact sheets or community updates, addressing the facility’s compliance issues and
17 return to compliance;

18 (5) increase or expand facility monitoring, recordkeeping, and/or reporting;

19 (6) conduct additional and/or enhanced training to improve facility operations and
20 compliance;

21 (7) increase by 25 percent the amount of financial assurance established and
22 maintained by the owner or operator of the facility for closure of the facility and
23 corrective action. The most recent closure cost estimate prepared in accordance with
24 sections 66264.142 and 66265.142 shall form the basis for the increase in financial
25 assurance for closure of the facility. The most recent corrective action cost estimate
26 prepared in accordance with sections 66264.100, 66264.101, and 66264.708 shall form
27 the basis for the increase in financial assurance for corrective action; or

28 (8) implement any other actions determined by the Department to be necessary to
29 ensure the facility’s compliance with its permit and/or any applicable orders, laws, and
30 regulations.

31 (c) The Department may grant a permit or permit modification for a facility with an
32 “unacceptable” Facility VSP Score if the Department finds that grant of the permit or permit
33 modification will not pose a threat to public health or safety or to the environment and that,
34 based on substantial evidence, at least one of the following:

35 (1) The facility owner or operator has implemented enforceable improvements to its
36 hazardous waste management processes or equipment that will substantively prevent
37 future noncompliance;

38 (2) A complete review of the facility’s compliance history demonstrates that the Facility
39 VSP Score does not provide an accurate characterization of the facility’s material
40 compliance record; or

41 (3) There are substantial and overriding benefits to the people of the State of California
42 resulting from the continued operation of the facility.

1 (d) If the Department grants a permit or permit modification for a facility has an
2 “unacceptable” Facility VSP score, the Department shall require all of the following:

3 (1) The permit term shall not exceed five (5) years;

4 (2) The permit must include enhanced compliance provisions, including, but not limited
5 to, annual independent third-party compliance audits consistent with subsection
6 66271.56(a)(1)(A) and (B). The permit shall specify the dates for submittal of audit
7 reports by the facility owner or operator; and

8 (3) The permit must include mitigation measures for all potential harm associated with
9 noncompliant activities or events, including enforceable and measurable actions to
10 eliminate or reduce impacts associated with noncompliance and to alleviate adverse
11 conditions caused by the facility’s noncompliance, or to which noncompliance may have
12 contributed.

13
14 NOTE: Authority cited: Sections 25150, 25200.21, 58004, and 58012, Health and Safety Code.
15 Reference: Sections 25110.8.5, 25186, and 25186.05, Health and Safety Code

16
17 **§ 66271.58 Appeals for Reconsideration**

18 (a) A facility owner or operator may submit an appeal of any proposed decision by the
19 Department to deny a permit application or permit modification, or to suspend, or to revoke a
20 permit pursuant to this article.

21 (b) If the facility owner or operator submits an appeal, the Department shall review its
22 proposed decision to determine if it is clearly erroneous or not. The Department shall have
23 the burden of establishing that its proposed decision is not clearly erroneous. This burden
24 may be met by demonstrating either of the following:

25 (1) The Facility VSP Score was calculated in a manner that is not in compliance with
26 this article; or

27 (2) A manifest injustice would otherwise result from the Department taking the proposed
28 action. A manifest injustice may be established by evidence showing one or more of the
29 following:

30 (A) The facility has implemented substantial improvements to its hazardous
31 waste management processes, or equipment, or both that will substantively and
32 effectively prevent future noncompliance;

33 (B) A complete review of the facility’s compliance history demonstrates by clear
34 and convincing evidence that the Facility’s VSP Score does not provide an
35 accurate characterization of the facility’s compliance record; or

36 (C) There are substantial and overriding benefits to the people of the State of
37 California resulting from the continued operation of the facility.

38 (c) A facility owner or operator who desires to appeal a decision under this section shall
39 submit an appeal within thirty (30) days of being informed by the Department in writing that it
40 is proposing one of the actions specified in subsection (a).

41 (d) Decision on Appeals. The Director or his or her designee shall issue a decision granting
42 or denying the relief sought, in whole or in part, or a notice of ongoing review, within sixty

HAZARDOUS WASTE FACILITY PERMITTING CRITERIA

1 (60) days after receipt of the request under this section. If the relief sought is denied in
2 whole or in part, the decision by the Department shall contain a concise and plain
3 description of the basis for denial of the request for further administrative review.
4 (e) Nothing in this article is intended to, or shall in any way, limit an owner's or operator's
5 ability to invoke the procedures in Chapter 21 relating to permit appeals.

6
7 NOTE: Authority cited: Sections 25150, 25200.21, 54008, and 58012, Health and Safety Code.
8 Reference: Sections 25110.8.5, 25186, and 25186.05, Health and Safety Code.

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